

SEVENTY-FIRST DAY

SATURDAY, MAY 10, 1997

PROCEEDINGS

The Senate met at 9:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Galloway, Harris, Haywood, Lindsay, Lucio, Luna, Madla, Moncrief, Nelson, Nixon, Ogden, Ratliff, Shapiro, Shapleigh, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

Absent-excused: Patterson.

The President announced that a quorum of the Senate was present.

The Reverend John R. Pitts, Senate Chaplain, offered the invocation as follows:

This is the day the Lord hath made. Let us rejoice and be glad in it.

This is Your day, Lord. A day for joy. A day for thanksgiving. A day to look back. A day to look forward. A day to say to ourselves: well done. A day to see months of labor begin to take shape in a tax bill which would never have come this far without the cooperation, dedication, and courage of many. Thank You, Lord, for these qualities in these men and women.

And so, Lord, we rejoice and are glad in this day. But we know that there is much more work to do in a very short time. Lord, as we rejoice, as we say our own thanksgivings, and as we look to our right and to our left and give thanks for those surrounding us, we ask from You continued courage, continued strength, and continued cooperation to do Your will and to do what is right for all Texans. Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVE OF ABSENCE

On motion of Senator Shapiro, Senator Patterson was granted leave of absence for today on account of important business.

REASON FOR ABSENCE

Senator Patterson submitted the following reason for absence:

I am absent today, Saturday, May 10, 1997, due to a commencement speech I am delivering at Texas A&M University—Galveston. Had I been present I would have voted yes on **CSHB 4** and **CSHJR 4**. However, since there are more than enough votes to pass these bills without my presence I have elected to deliver the commencement speech in Galveston.

Yours respectfully,

/s/Jerry Patterson
State Senator - District 11

PERMISSION TO INTRODUCE BILL

On motion of Senator Truan and by unanimous consent, Article III, Section 5 of the Texas Constitution and Senate Rule 7.07(b) were suspended to permit the introduction of the following bill: **SB 1953**

SENATE BILL ON FIRST READING

The following bill was introduced, read first time, and referred to the committee indicated:

SB 1953 by Armbrister

Relating to certain environmental permitting procedures of the Texas Natural Resource Conservation Commission.

To Committee on Natural Resources.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1185 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **HB 1185**. The Conference Committee Report was read and was filed with the Senate on Thursday, May 8, 1997.

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 203 ADOPTED**

Senator Shapiro called from the President's table the Conference Committee Report on **SB 203**. The Conference Committee Report was read and was filed with the Senate on Thursday, May 8, 1997.

On motion of Senator Shapiro, the Conference Committee Report was adopted by a viva voce vote.

GUEST PRESENTED

Senator Truan was recognized and introduced to the Senate Mrs. Margaret Staat, mother of Kathy Staat, Director of Senate Media.

The Senate welcomed Mrs. Staat.

SENATE BILL 367 WITH HOUSE AMENDMENT

Senator Brown called **SB 367** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 367** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to the continuation and functions of the Commission on Jail Standards.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 511.001, Government Code, is amended to read as follows:

Sec. 511.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Commission on Jail Standards.

(2) "Correctional facility" means a facility operated by a county, a municipality, or a private vendor for the confinement of a person arrested for, charged with, or convicted of a criminal offense.

(3) "County jail" means a facility operated by or for a county for the confinement of persons accused or convicted of an offense.

(4) [(3)] "Executive director" means the executive director of the commission.

(5) "Federal prisoner" means a person arrested for, charged with, or convicted of a violation of a federal law.

(6) "Inmate" means a person arrested for, charged with, or convicted of a criminal offense of this state or another state of the United States and confined in a county jail, a municipal jail, or a correctional facility operated by a county, a municipality, or a private vendor.

(7) [(6)] "Prisoner" means a person confined in a county jail.

SECTION 2. Section 511.003, Government Code, is amended to read as follows:

Sec. 511.003. SUNSET PROVISION. The Commission on Jail Standards is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2009 [1997].

SECTION 3. Section 511.004, Government Code, is amended by amending Subsections (a) and (f) and adding Subsections (g), (h), (i), and (j) to read as follows:

(a) The commission consists of nine members appointed by the governor with the advice and consent of the senate. One member must be a sheriff of a county with a population of more than 35,000, one must be a sheriff of a county with a population of 35,000 or less, one must be a county judge, one must be a county commissioner, one must be a practitioner of medicine licensed by the Texas State Board of Medical Examiners, and the other four must be representatives of the general public [citizens of this state who do not

~~hold another public office~~]. At least one of the four citizen members must be from a county with a population of 35,000 or less.

(f) Appointments to the commission shall be made without regard to the race, color, ~~disability~~ [~~handicap~~], sex, religion, age, or national origin of the appointees.

~~(g) A person is not eligible for appointment as a public member of the commission if the person or the person's spouse:~~

~~(1) is registered, certified, or licensed by an occupational regulatory agency in the field of law enforcement;~~

~~(2) is employed by or participates in the management of a business entity, county jail, or other organization regulated by the commission or receiving funds from the commission;~~

~~(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission; or~~

~~(4) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.~~

~~(h) To be eligible to take office as a member of the commission, a person appointed to the commission must complete at least one course of a training program that complies with Subsection (i).~~

~~(i) The training program required by Subsection (h) must provide information to the person regarding:~~

~~(1) the enabling legislation that created the commission;~~

~~(2) the programs operated by the commission;~~

~~(3) the role and functions of the commission;~~

~~(4) the rules of the commission with an emphasis on the rules that relate to disciplinary and investigatory authority;~~

~~(5) the current budget for the commission;~~

~~(6) the results of the most recent formal audit of the commission;~~

~~(7) the requirements of the:~~

~~(A) open meetings law, Chapter 551;~~

~~(B) open records law, Chapter 552; and~~

~~(C) administrative procedure law, Chapter 2001;~~

~~(8) the requirements of the conflict of interests laws and other laws relating to public officials; and~~

~~(9) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.~~

~~(j) A person appointed to the commission is entitled to reimbursement for travel expenses incurred in attending the training program required by Subsection (h) as provided by the General Appropriations Act and as if the person were a member of the commission.~~

SECTION 4. Subsection (c), Section 511.0041, Government Code, is amended to read as follows:

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists.

If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. Section 511.0071, Government Code, is amended by adding Subsection (f) to read as follows:

(f) The commission shall collect and maintain information about each complaint received by the commission, including:

- (1) the date the complaint is received;
- (2) the name of the complainant;
- (3) the subject matter of the complaint;
- (4) a record of all persons contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) for a complaint for which the agency took no action, an explanation of the reason the complaint was closed without action.

SECTION 6. Subsections (h) and (i), Section 511.008, Government Code, are amended to read as follows:

(h) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, ~~disability~~ ~~[handicap]~~, sex, religion, age, or national origin. The policy statement must include:

- (1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that are in compliance with Chapter 21, Labor Code;
- (2) a comprehensive analysis of the commission work force that meets federal and state laws, rules, regulations, and instructions directly adopted under those laws, rules, or regulations [guidelines];
- (3) procedures by which a determination can be made about the extent of underuse [significant underutilization] in the commission work force of all persons for whom federal or state laws, rules, regulations, and instructions directly adopted under those laws, rules, or regulations [guidelines] encourage a more equitable balance; and
- (4) reasonable methods to appropriately address those areas of underuse [significant underutilization].

(i) A policy statement prepared under Subsection (h) must cover an annual period, be updated at least annually and reviewed by the Commission on Human Rights for compliance with Subsection (h)(1), and be filed with the governor's office.

SECTION 7. Subsection (a), Section 511.009, Government Code, as amended by Chapters 171, 262, and 722, Acts of the 74th Legislature, 1995, is amended to read as follows:

(a) The commission shall:

- (1) adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;
- (2) adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;

(3) adopt reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;

(4) adopt reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;

(5) revise, amend, or change rules and procedures if necessary;

(6) provide to local government officials consultation on and technical assistance for county jails;

(7) review and comment on plans for the construction and major modification or renovation of county jails;

(8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules adopted under this chapter;

(9) review the reports submitted under Subdivision (8) and require commission employees to inspect county jails regularly to ensure compliance with state law, commission orders, and rules and procedures adopted under this chapter;

(10) adopt a classification system to assist sheriffs and judges in determining which defendants are low-risk and consequently suitable participants in a county jail work release program under Article 42.034, Code of Criminal Procedure; ~~and~~

(11) adopt rules relating to requirements for segregation of classes of inmates and to capacities for county jails;[:]

(12) ~~{(11)}~~ require that the chief jailer of each municipal lockup submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the lockup, including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups; ~~and~~

(13) ~~{(11)}~~ at least annually determine whether each county jail is in compliance with the rules and procedures adopted under this chapter;[:]

(14) ~~{(12)}~~ require that the sheriff and commissioners court of each county submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the county jail, including all information necessary to determine compliance with state law concerning secure confinement of children in county jails; ~~and~~

(15) schedule announced and unannounced inspections of jails under its jurisdiction based on the jail's history of compliance with commission standards and other high-risk factors identified by the commission.

SECTION 8. Subsection (d), Section 511.0091, Government Code, is amended to read as follows:

(d) All money paid to the commission under this chapter is subject to Subchapter F, Chapter 404 [The Commission on Jail Standards inspection account is established in the General Revenue Fund. The commission shall deposit all money collected under this section to the credit of the account. Money in the account may be used only by the commission for the purpose of

~~reviewing and commenting on documents and performing inspections as described by Subsection (a)].~~

SECTION 9. Chapter 511, Government Code, is amended by adding Sections 511.0092 through 511.0096 to read as follows:

Sec. 511.0092. CONTRACTS FOR OUT-OF-STATE INMATES. (a) The only entities other than the state that are authorized to operate a correctional facility to house in this state inmates convicted of offenses committed against the laws of another state of the United States are:

(1) a county or municipality; and

(2) a private vendor operating a correctional facility under a contract with a county under Subchapter F, Chapter 351, Local Government Code, or a municipality under Subchapter E, Chapter 361, Local Government Code.

(b) A county commissioners court or the governing body of a municipality may enter into a contract with another state or a jurisdiction in another state for the purpose described by Subsection (a) only if:

(1) the county or municipality submits to the commission:

(A) a statement of the custody level capacity and availability in the correctional facility that will house the inmates; and

(B) a written plan explaining the procedure to be used to coordinate law enforcement activities in response to any riot, rebellion, escape, or other emergency situation occurring in the facility; and

(2) the commission:

(A) inspects the facility and reviews the statement and plan submitted under Subdivision (1); and

(B) after the inspection and review, determines that the correctional facility is a proper facility for housing the inmates and provides the county or municipality with a copy of that determination.

(c) A private vendor operating a correctional facility in this state may not enter into a contract for the purposes of Subsection (a) with another state or a jurisdiction in another state.

(d) A contract described by Subsection (b) must provide that:

(1) each correctional facility in which inmates are to be housed meets minimum standards established by the commission;

(2) each inmate to be released from custody must be released in the sending state;

(3) before transferring an inmate, the receiving facility shall review for compliance with the commission's classification standards:

(A) all records concerning the sending state's classification of the inmate, including records relating to the inmate's conduct while confined in the sending state; and

(B) appropriate medical information concerning the inmate, including certification of tuberculosis screening or treatment;

(4) except as provided by Subsection (e), the sending state will not transfer and the receiving facility will not accept an inmate who has a record of institutional violence involving the use of a deadly weapon or a pattern of violence while confined in the sending state or a record of escape or attempted escape from secure custody;

(5) the receiving entity will determine the inmate's custody level in accordance with commission rules, in order to ensure that the custody level assignments for the facility as a whole are compatible with the construction security level availability in the facility; and

(6) the receiving facility is entitled to terminate at will the contract by providing the sending state with 90 days' notice of the intent to terminate the contract.

(e) The commission may waive the requirement that a contract contain the provision described by Subsection (d)(4) if the commission determines that the receiving facility is capable of confining an inmate described by Subsection (d)(4).

(f) A county, municipality, or private vendor operating under a contract described by Subsection (b) shall:

(1) send a copy of the contract to the commission;

(2) require all employees at the facility to maintain certification as required by the Commission on Law Enforcement Officer Standards and Education;

(3) submit to inspections by the commission; and

(4) immediately notify the commission of any riot, rebellion, escape, or other emergency situation occurring at the facility.

(g) The commission may require the sending state or an entity described in Subsection (a) to reimburse the state for any cost incurred by a state agency in responding to any riot, rebellion, escape, or other emergency situation occurring at the facility.

(h) Notwithstanding the provisions of Chapter 252, Chapter 262, Subchapter F, Chapter 351, or Subchapter E, Chapter 361, Local Government Code, the governing body of a municipality or a county commissioners court may enter into a contract with a private vendor to provide professional services under this section if the commission reviews and approves the private vendor's qualifications to provide such services and the terms of the proposed contract comply with this section.

(i) The Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), does not apply to an employee of a facility in the actual discharge of duties as an employee of the facility if the employee is required by Subsection (f)(2) or by Section 415.0541 to maintain certification from the Commission on Law Enforcement Officer Standards and Education.

Sec. 511.0093. RULES AND FEES RELATED TO OUT-OF-STATE INMATES. (a) The commission may impose a fee on a private vendor that operates a correctional facility housing prisoners from jurisdictions other than this state. The fee must reasonably compensate the commission for the cost of regulating and providing technical assistance to the facility.

(b) The commission may adopt rules regulating the number of federal prisoners and prisoners from jurisdictions other than Texas that are housed in a county jail, a municipal jail, or a correctional facility operated by a private vendor under contract with a municipality if the jail or correctional facility houses state, county, or municipal prisoners or prisoners of another state of the United States.

(c) The commission may adopt other rules regulating jails or correctional facilities described by Subsection (b) as necessary to protect the health and safety of prisoners described by Subsection (b), local and Texas prisoners, jail personnel, and the public.

Sec. 511.0094. EXCLUSION OF JAILS OR CORRECTIONAL FACILITIES HOUSING ONLY FEDERAL PRISONERS. The provisions of this chapter do not apply to a correctional facility, other than a county jail, contracting to house only federal prisoners and operating pursuant to a contract between a unit of the federal government and a county, a municipality, or a private vendor. If a county, municipality, or private vendor contracts to house or begins to house state, county, or municipal prisoners or prisoners of another state of the United States, it shall report to the commission before placing such inmates in a correctional facility housing only federal prisoners.

Sec. 511.0095. AUTHORITY TO HOUSE OUT-OF-STATE INMATES. Nothing in this chapter shall be construed to limit the authority of the state granted under Article 42.19, Code of Criminal Procedure, or other applicable law to house in this state inmates convicted of offenses committed against the laws of another state of the United States.

Sec. 511.0096. TERMINATION OF CONTRACTS FOR OUT-OF-STATE INMATES. The commission may require the receiving facility to terminate a contract under Section 511.0092(d)(6), if the commission determines that the receiving facility is needed to house inmates convicted of offenses against the laws of the state and funds have been appropriated by the state to compensate the receiving facility for the incarceration of the inmates.

SECTION 10. Subsection (e), Section 351.043, Local Government Code, is repealed.

SECTION 11. The changes in law made by this Act in the qualifications of members of the Commission on Jail Standards do not affect the entitlement of a member serving on the commission immediately before September 1, 1997, to continue to carry out the functions of the commission for the remainder of the member's term. The changes in law apply only to a member appointed on or after September 1, 1997. This Act does not prohibit a person who is a member of the commission on September 1, 1997, from being reappointed to the commission if the person has the qualifications required for a member under Chapter 511, Government Code, as amended by this Act.

SECTION 12. This Act takes effect September 1, 1997.

SECTION 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Brown, the Senate concurred in the House amendment to **SB 367** by a viva voce vote.

SENATE BILL 1904 WITH HOUSE AMENDMENT

Senator Sibley called **SB 1904** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **SB 1904** as follows:

(1) Amend SECTION 1, Sec. 2205.046(a) (page 1, line 10 and line 11) by inserting "continued maintenance of" between the words "for" on line 10 and "aircraft" on line 11.

(2) Amend SECTION 1, Sec. 2205.046(b) (page 1, line 13) by inserting "institution will accept full responsibility for maintenance of the" between the words "the" and "aircraft".

(3) Amend SECTION 1, Sec. 2205.046(b) (page 1, line 13) by inserting "and that it" after the word aircraft.

The amendment was read.

Senator Sibley moved to concur in the House amendment to **SB 1904**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

(Senator Truan in Chair)

SENATE BILL 788 WITH HOUSE AMENDMENT

Senator Ellis called **SB 788** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 788** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the duty of certain hospitals to provide community benefits and charity care.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 311.045(b)-(d), Health and Safety Code, are amended to read as follows:

(b)(1) A nonprofit hospital or hospital system may elect to provide community benefits, which include charity care and government-sponsored indigent health care, according to any of the following standards:

(A) charity care and government-sponsored indigent health care are provided at a level which is reasonable in relation to the community needs, as determined through the community needs assessment, the available resources of the hospital or hospital system, and the tax-exempt benefits received by the hospital or hospital system;

~~(B) [charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of the hospital's or hospital system's net patient revenue;~~

~~[(C)] charity care and government-sponsored indigent health care are provided in an amount equal to at least 100 percent of the hospital's or hospital system's tax-exempt benefits, excluding federal income tax;~~

~~[(D) prior to January 1, 1996, charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's or hospital system's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least three percent of net patient revenue;] or~~

~~(C) [(E) beginning with the hospital's or hospital system's fiscal year starting after December 31, 1995,] charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's or hospital system's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of net patient revenue.~~

(2) For purposes of satisfying Subdivision (1)(C) ~~[(1)(E)]~~, a hospital or hospital system may not change its existing fiscal year unless the hospital or hospital system changes its ownership or corporate structure as a result of a sale or merger.

(3) A nonprofit hospital that has been designated as a disproportionate share hospital under the state Medicaid program in the current fiscal year or in either of the previous two fiscal years shall be considered to have provided a reasonable amount of charity care and government-sponsored indigent health care and shall be deemed in compliance with the standards in this subsection.

(c) The providing of charity care and government-sponsored indigent health care in accordance with Subsection (b)(1)(A) shall be guided by the prudent business judgment of the hospital which will ultimately determine the appropriate level of charity care and government-sponsored indigent health care based on the community needs, the available resources of the hospital, the tax-exempt benefits received by the hospital, and other factors that may be unique to the hospital, such as the hospital's volume of Medicare and Medicaid patients. These criteria shall not be determinative factors, but shall be guidelines contributing to the hospital's decision, along with other factors which may be unique to the hospital. The standards set forth in Subsections (b)(1)(B) and ~~;~~ (b)(1)(C) ~~[(b)(1)(D), and (b)(1)(E)]~~ shall also not be considered determinative of the amount of charity care and government-sponsored indigent health care that will be considered reasonable under Subsection (b)(1)(A).

(d) For purposes of this section, a hospital that satisfies Subsection (b)(1)(A) or (b)(3) shall be excluded in determining a hospital system's compliance with the standards provided by Subsection (b)(1)(B) or ~~;~~ (b)(1)(C) ~~[(b)(1)(D), or (b)(1)(E)]~~.

SECTION 2. Subchapter D, Chapter 311, Health and Safety Code, is amended by adding Section 311.0455 to read as follows:

Sec. 311.0455. ANNUAL REPORT BY THE DEPARTMENT. (a) The department shall submit to the attorney general and comptroller not later than July 1 of each year a report listing each nonprofit hospital or hospital system that did not meet the requirements of Section 311.045 during the preceding fiscal year.

(b) The department shall submit to the attorney general and the comptroller not later than November 1 of each year a report containing the following information for each nonprofit hospital or hospital system during the preceding fiscal year:

(1) the amount of charity care, as defined by Section 311.031, provided;

(2) the amount of government-sponsored indigent health care, as defined by Section 311.031, provided;

(3) the amount of community benefits, as defined by Section 311.042, provided;

(4) the amount of net patient revenue, as defined by Section 311.042, and the amount constituting four percent of net patient revenue;

(5) the dollar amount of the hospital's or hospital system's charity care and community benefits requirements met;

(6) a computation of the percentage by which the amount described by Subdivision (5) is above or below the dollar amount of the hospital's or hospital system's charity care and community benefits requirements;

(7) the amount of tax-exempt benefits, as defined by Section 311.042, provided, if the hospital is required to report tax-exempt benefits under Section 311.045(b)(1)(A) or (b)(1)(B); and

(8) the amount of charity care expenses reported in the hospital's or hospital system's audited financial statement.

(c) The department shall make the report required by Subsection (b) available to the public and shall issue a press release concerning the availability of the report.

(d) For purposes of Subsection (b), "nonprofit hospital" includes the following if the hospital is not located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a Health Professionals Shortage Area:

(1) a Medicaid disproportionate share hospital; or

(2) a public hospital that is owned or operated by a political subdivision or municipal corporation of the state, including a hospital district or authority.

SECTION 3. Section 311.046, Health and Safety Code, is amended by amending Subsections (a) and (b) and adding Subsection (e) to read as follows:

(a) A nonprofit hospital shall prepare an annual report of the community benefits plan and shall include in the report at least the following information:

(1) the hospital's mission statement;

(2) a disclosure of the health care needs of the community that were considered in developing the hospital's community benefits plan pursuant to Section 311.044(b); ~~and~~

(3) a disclosure of the amount and types of community benefits, including charity care, actually provided. Charity care shall be reported as a separate item from other community benefits;

(4) a statement of its total operating expenses computed in accordance with generally accepted accounting principles for hospitals from the most recent completed and audited prior fiscal year of the hospital; and

(5) a completed worksheet that computes the ratio of cost to charge for the fiscal year referred to in Subdivision (4) and that includes the same requirements as Worksheet 1-A adopted by the department in August 1994 for the 1994 "Annual Statement of Community Benefits Standards".

(b) A nonprofit hospital shall file the annual report of the community benefits plan with the Bureau of State Health Data and Policy Analysis at the department. The report shall be filed no later than April 30 of each year. In addition to the annual report, a completed worksheet as required by Subsection (a)(5) shall be filed no later than 10 working days after the date the hospital files its Medicare cost report [120 days after the end of the hospital's fiscal year; provided, however, that the first report shall be filed no later than 120 days after the end of the hospital's fiscal year ending during 1994].

(c) For purposes of this section, "nonprofit hospital" includes the following if the hospital is not located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a Health Professionals Shortage Area:

(1) a Medicaid disproportionate share hospital; or

(2) a public hospital that is owned or operated by a political subdivision or municipal corporation of the state, including a hospital district or authority.

SECTION 4. (a) This Act takes effect January 1, 1998.

(b) Section 3 of this Act applies only to reports filed for fiscal years ending on or after January 1, 1998. The filing date of a report for a fiscal year ending before January 1, 1998, is governed by the law as it existed immediately before September 1, 1997, and that law is continued in effect for that purpose.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Ellis, the Senate concurred in the House amendment to **SB 788** by a viva voce vote.

(President in Chair)

SENATE BILL 1131 WITH HOUSE AMENDMENTS

Senator Ellis called **SB 1131** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 1131** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to the regulation of the practice of cosmetology; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1(3), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(3) "Cosmetology" means the performing or doing, or offering or attempting to do or perform for compensation, any of the following acts, services, works, treatments, or undertakings:

(A) arranging, beautifying, bleaching, tinting, cleansing, coloring, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, waving, or otherwise treating the hair as primary services, treatments, or undertaking by any means or method, including any bobbing, clipping, cutting, or trimming of the hair as a necessary incident preparatory or ancillary to such primary services; cutting the hair as a primary service, treatment, or undertaking and not as a necessary incident preparatory or ancillary to those primary services enumerated in this subdivision, or primarily engaging in the occupation of cutting hair or practicing primarily as a haircutter by cutting hair as a separate and independent service, treatment, or undertaking for which haircut a charge is made, separate and apart from any other service, treatment, or undertaking, directly or indirectly, or in any manner;

(B) cleansing, stimulating, or massaging the scalp, face, neck, or arms by means of the hands, devices, apparatus, or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams; beautifying the face, neck, or arms by use of cosmetic preparations, antiseptics, tonics, lotions, powders, oils, clays, creams, or appliances;

(C) removing superfluous hair from the body by the use of depilatories or mechanical tweezers;

(D) cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person; or attaching false nails or massaging, cleansing, treating, or beautifying the hands or feet of any person;

(E) servicing a wig or artificial hairpiece either on a human head or on a block subsequent to the initial retail sale and servicing by any of the practices enumerated in Paragraph (A) of this subdivision;

(F) administering facial treatments;

(G) hair weaving or braiding; or

(H) shampooing and conditioning hair.

SECTION 2. Section 4(l), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), as added by Chapter 777, Acts of the 73rd Legislature, Regular Session, 1993, is redesignated as Subsection (m) and amended to read as follows:

(m) [(+)] The commission by rule shall establish and assess on all persons and entities licensed or regulated under this Act reasonable and necessary fees in amounts necessary to administer this Act.

SECTION 3. Section 9, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(e) A license or certificate issued under this Act is not transferable.

SECTION 4. Section 10(d), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) The applicant is entitled to an operator license if the applicant [he] possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays the [a-\$35] license fee prescribed by the commission, and has not committed an act that constitutes a ground for denial of a license.

SECTION 5. Section 11(d), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) The applicant is entitled to a manicurist license if the applicant [he] possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays the [a-\$35] license fee prescribed by the commission, and has not committed an act that constitutes a ground for denial of a license.

SECTION 6. Section 12(d), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) The applicant is entitled to an instructor license if the applicant [he] possesses qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays the [a-\$50] license fee prescribed by the commission, and has not committed an act that constitutes a ground for denial of a license.

SECTION 7. Section 13(d), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) The applicant is entitled to a specialty certificate if the applicant [he] possesses the qualifications enumerated in Subsection (b) of this section, pays the [a-\$35] certificate fee prescribed by the commission, and has not committed an act that constitutes a ground for denial of a certificate.

SECTION 8. Section 13A(d), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) The applicant is entitled to a facialist specialty license if the applicant possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays the [a-\$35] license fee prescribed by the commission, and has not committed an act that constitutes a ground for denial of a license.

SECTION 9. Section 15(b), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) A temporary license shall be issued on submission of an application form prescribed by the commission and payment of the [a-\$45] temporary license fee prescribed by the commission if the applicant meets the requirements of Subsection (a) of this section.

SECTION 10. Section 16, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16. DUPLICATE LICENSE OR CERTIFICATE. (a) A duplicate license or certificate shall be issued upon application on a form prescribed by the commission and on the payment of the [a-\$35] fee prescribed by the commission.

(b) A transcript shall be given to licensees under this Act upon application on a form prescribed by the commission and payment of the [a-\$5] fee prescribed by the commission.

SECTION 11. Section 17(b), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The applicant shall submit an application on a form prescribed by the commission and pay the [a-\$100] fee prescribed by the commission, plus the applicable license or certification fee.

SECTION 12. Section 18(b), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) A student permit shall be issued on submission of an application form prescribed by the commission and payment of the [a-\$25] fee prescribed by the commission which must accompany the application.

SECTION 13. Sections 19(b) and (c), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) An applicant for a beauty shop license must submit an application on a form prescribed by the commission. The application must contain proof of the particular requisites for a beauty shop as established by the commission and must be verified by the applicant. With the application, the applicant must submit the [a-\$35] inspection fee prescribed by the commission.

(c) The applicant is entitled to a beauty shop license if the application shows compliance with the rules of the commission, the [a-\$45] license fee prescribed by the commission is paid, and the applicant [he] has not committed an act that constitutes a ground for denial of a license.

SECTION 14. Sections 20(b) and (c), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) An applicant for a specialty shop license must submit an application on a form prescribed by the commission. The application must contain proof of the particular requisites for a specialty shop as established by the commission and must be verified by the applicant. With the application, the applicant must submit the [a-\$35] inspection fee prescribed by the commission.

(c) The applicant is entitled to a specialty shop license if the application shows compliance with the rules and regulations of the commission, the [a \$45] license fee prescribed by the commission is paid, and the applicant [he] has not committed an act that constitutes a ground for denial of a license.

SECTION 15. Section 21(d), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) Each application for a private beauty culture school license must be accompanied by payment of the [a \$500] license fee and [a \$200] inspection fee prescribed by the commission. Each application for certification as a public secondary or public postsecondary beauty culture school must be accompanied by the [a \$200] inspection fee prescribed by the commission. The inspection fee is charged for each inspection trip required before approval of the license or certificate.

SECTION 16. Section 21A(b), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The commission shall determine the amount of the fee by applying a percentage to each school's annual renewal fee. The percentage is the rate determined by the commission that, when applied to the total of all renewal fees, will result in the collection of \$200,000 for deposit in the fund in the first three years that the fee is collected. ~~[The fee assessed under this section may not exceed \$200 per year.]~~

SECTION 17. Section 29, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 29. RIGHT OF ACCESS. The commission, an inspector, or any duly authorized representative of the commission may enter the premises of any licensee at any time during normal business hours ~~[and in such manner as not to interfere with the conduct or operation of the business or school]~~ to determine whether ~~[or not]~~ the licensee is in compliance with this Act and the rules of the commission.

SECTION 18. Section 31, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 31. HEALTH CERTIFICATE. (a) Every applicant for an original or renewal operator license, instructor license, reciprocal license, or specialty certificate must submit a certificate of health signed by a licensed physician or licensed physician assistant, showing that the applicant is free, as determined by an examination, from tuberculosis, hepatitis, or a [any] contagious disease for which the applicant is not entitled to protection under the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) [as determined by an examination that included a tuberculosis test].

(b) Any physician or physician assistant who signs a health certificate required by Subsection (a) of this section showing the applicant to be free from a ~~[any contagious]~~ disease covered by that subsection without having made the physical examination is guilty of a misdemeanor, and on conviction may be fined not less than \$50 or more than \$200.

SECTION 19. Section 32, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 32. INFECTIOUS AND CONTAGIOUS DISEASES. (a) A person holding an operator, instructor, or specialty certificate may not perform any practice of cosmetology knowing that he is suffering from an infectious or contagious disease for which the person is not entitled to protection under the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.).

(b) A person holding a beauty or specialty shop license, a private beauty culture school license, or a license to operate a vocational cosmetology program in a public school may not employ any person to perform any practice or practices of cosmetology knowing that the licensee is suffering from an infectious or contagious disease for which the person is not entitled to protection under the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.).

SECTION 20. Sections 33(e)-(g) and (i), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), are amended to read as follows:

(e) A license that has been expired for less than 30 days may be renewed. A renewal license shall be issued on submission of a completed application form prescribed by the commission and payment of the renewal fee, plus the [a-\$10] delinquency fee prescribed by the commission.

(f) Except as provided by Subsection (h) of this section, a license that has been expired for more than 30 days but less than five years may be renewed. A renewal license shall be issued on submission of an application, payment of the fee established by this Act for each year the license has been expired, and payment of the [a] delinquency fee prescribed by the commission.
[~~Delinquency fees under this subsection are:~~

[(1) operator or specialty license	\$25;
[(2) instructor license	\$50;
[(3) manicurist license	\$25 and
[(4) beauty or specialty salon license	\$35.]

(g) An applicant for renewal of a license that has been expired for more than five years shall be issued a license on submission of an application, payment of the examination fee, satisfactory completion of the examination, and payment of the [a-\$50] reinstatement fee prescribed by the commission.

(i) An applicant for a license must have a high school diploma, or the equivalent of a high school diploma, or have passed an ability to benefit from training examination. [~~The commission by rule shall establish the delinquency fee for a booth rental license.~~]

SECTION 21. Section 34(a), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The commission shall prescribe renewal [Renewal] fees under this Act [are:

[(1) Operator or specialty license	\$35;
[(2) Instructor license	\$50;

~~[(3) Manicurist license _____ \$35;~~
~~[(4) Private beauty school license _____ \$200 per year;~~

and

~~[(5) Beauty or specialty shop license _____ \$45].~~

SECTION 22. Section 35, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 35. VIOLATION. (a) If an inspector discovers a violation of this Act or of a rule established by the commission, the inspector ~~[he]~~ shall:

(1) give written notice of the violation on a form prescribed by the commission to the violator; and

(2) ~~[if the violation is not corrected in 10 days from the date of notice, the inspector shall]~~ file a complaint with the executive director.

(b) If a licensee commits a violation of this Act or a rule adopted under this Act and the violation poses a serious threat to the public health, the commission shall initiate ~~[three or more violations of a similar nature within any 12-month period;]~~ a suit for injunction and proceedings for suspension or revocation of the license ~~[shall be instituted].~~

SECTION 23. Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended by adding Section 35A to read as follows:

Sec. 35A. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty against a person licensed or regulated under this Act who violates this Act or a rule or order adopted under this Act.

(b) The penalty for a violation may be in an amount not to exceed \$1,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) The executive director, on a determination that a violation has occurred, may issue to the commission a report that states the facts on which the determination is based and the director's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the executive director shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the

occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the executive director or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the executive director, the commission by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the executive director shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the commission by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the commission's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the commission's order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commission's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(l) On receipt of a copy of an affidavit under Subsection (k)(2) of this section, the executive director may file with the court, within five days after

the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the commission:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

SECTION 24. Section 40, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 40. CRIMINAL PENALTIES. (a) Any person who violates this Act, except Section 31 of this Act, is guilty of a misdemeanor, and on conviction is punishable by a fine of not less than \$100 nor more than \$300.

(b) A licensee or certificate holder who violates this Act is guilty of a misdemeanor and on conviction is punishable under Subsection (a) of this section and is subject to the revocation or suspension of the person's [his] license or certificate.

SECTION 25. Section 21C, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is repealed.

SECTION 26. (a) This Act takes effect September 1, 1997.

(b) A specific fee amount prescribed in Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil

Statutes), as that statute existed immediately before the effective date of this Act, shall remain in effect until superseded by a rule adopted by the Texas Cosmetology Commission prescribing a different fee amount, and the former law is continued in effect for that purpose.

SECTION 27. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

In **CSSB 1131**, on page 10, line 15, insert "first renewal of" between the words "for" and "a".

The amendments were read.

On motion of Senator Ellis, the Senate concurred in the House amendments to **SB 1131** by a viva voce vote.

(Senator Brown in Chair)

SENATE BILL 386 WITH HOUSE AMENDMENTS

Senator Sibley called **SB 386** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 386** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to review of and liability for certain health care treatment decisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 88 to read as follows:

CHAPTER 88. HEALTH CARE LIABILITY

Sec. 88.001. DEFINITIONS. In this chapter:

(1) "Appropriate and medically necessary" means the standard for health care services as determined by physicians and health care providers in accordance with the prevailing practices and standards of the medical profession and community.

(2) "Enrollee" means an individual who is enrolled in a health care plan, including covered dependents.

(3) "Health care plan" means any plan whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

(4) "Health care provider" means a person or entity as defined in Section 1.03(a)(3), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes).

(5) "Health care treatment decision" means a determination made when medical services are actually provided by the health care plan and a decision which affects the quality of the diagnosis, care, or treatment provided to the plan's insureds or enrollees.

(6) "Health insurance carrier" means a company that is authorized to issue a policy of accident and sickness insurance under Section 1, Chapter 397, Acts of the 54th Legislature, 1955 (Article 3.70-1, Vernon's Texas Insurance Code).

(7) "Health maintenance organization" means an organization licensed under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code).

(8) "Managed care entity" means any entity which delivers, administers, or assumes risk for health care services with systems or techniques to control or influence the quality, accessibility, utilization, or costs and prices of such services to a defined enrollee population, but does not include an employer acting on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer or a pharmacy licensed by the Texas State Board of Pharmacy.

(9) "Physician" means:

(A) an individual licensed to practice medicine in this state;

(B) a professional association organized under the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes) or a nonprofit health corporation certified under Section 5.01, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes); or

(C) another person wholly owned by physicians.

(10) "Ordinary care" means, in the case of a health insurance carrier, health maintenance organization, or managed care entity, that degree of care that a health insurance carrier, health maintenance organization, or managed care entity of ordinary prudence would use under the same or similar circumstances. In the case of a person who is an employee, agent, ostensible agent, or representative of a health insurance carrier, health maintenance organization, or managed care entity, "ordinary care" means that degree of care that a person of ordinary prudence in the same profession, specialty, or area of practice as such person would use in the same or similar circumstances.

Sec. 88.002. APPLICATION. (a) A health insurance carrier, health maintenance organization, or other managed care entity for a health care plan has the duty to exercise ordinary care when making health care treatment decisions and is liable for damages for harm to an insured or enrollee proximately caused by its failure to exercise such ordinary care.

(b) A health insurance carrier, health maintenance organization, or other managed care entity for a health care plan is also liable for damages for harm to an insured or enrollee proximately caused by the health care treatment decisions made by its:

(1) employees;

(2) agents;

(3) ostensible agents; or

(4) representatives who are acting on its behalf and over whom it has the right to exercise influence or control or has actually exercised influence or control which result in the failure to exercise ordinary care.

(c) The standards in Subsections (a) and (b) create no obligation on the part of the health insurance carrier, health maintenance organization, or other managed care entity to provide to an insured or enrollee treatment which is not covered by the health care plan of the entity.

(d) A health insurance carrier, health maintenance organization, or managed care entity may not remove a physician or health care provider from its plan or refuse to renew the physician or health care provider with its plan for advocating on behalf of an enrollee for appropriate and medically necessary health care for the enrollee.

(e) A health insurance carrier, health maintenance organization, or other managed care entity may not enter into a contract with a physician, hospital, or other health care provider or pharmaceutical company which includes an indemnification or hold harmless clause for the acts or conduct of the health insurance carrier, health maintenance organization, or other managed care entity. Any such indemnification or hold harmless clause in an existing contract is hereby declared void.

(f) Nothing in any law of this state prohibiting a health insurance carrier, health maintenance organization, or other managed care entity from practicing medicine or being licensed to practice medicine may be asserted as a defense by such health insurance carrier, health maintenance organization, or other managed care entity in an action brought against it pursuant to this section or any other law.

(g) In an action against a health insurance carrier, health maintenance organization, or managed care entity, a finding that a physician or other health care provider is an employee, agent, ostensible agent, or representative of such health insurance carrier, health maintenance organization, or managed care entity shall not be based solely on proof that such person's name appears in a listing of approved physicians or health care providers made available to insureds or enrollees under a health care plan.

(h) This chapter does not apply to workers' compensation insurance coverage as defined in Section 401.011, Labor Code.

Sec. 88.003. LIMITATIONS ON CAUSE OF ACTION. (a) A person may not maintain a cause of action under this chapter against a health insurance carrier, health maintenance organization, or other managed care entity that is required to comply with the utilization review requirements of Article 21.58A, Insurance Code, or the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), unless the affected insured or enrollee or the insured's or enrollee's representative:

(1) has exhausted the appeals and review applicable under the utilization review requirements; or

(2) before instituting the action:

(A) gives written notice of the claim as provided by Subsection (b); and

(B) agrees to submit the claim to a review by an independent review organization under Article 21.58A, Insurance Code, as required by Subsection (c).

(b) The notice required by Subsection (a)(2)(A) must be delivered or mailed to the health insurance carrier, health maintenance organization, or

managed care entity against whom the action is made not later than the 30th day before the date the claim is filed.

(c) The insured or enrollee or the insured's or enrollee's representative must submit the claim to a review by an independent review organization if the health insurance carrier, health maintenance organization, or managed care entity against whom the claim is made requests the review not later than the 14th day after the date notice under Subsection (a)(2)(A) is received by the health insurance carrier, health maintenance organization, or managed care entity. If the health insurance carrier, health maintenance organization, or managed care entity does not request the review within the period specified by this subsection, the insured or enrollee or the insured's or enrollee's representative is not required to submit the claim to independent review before maintaining the action.

(d) Subject to Subsection (e), if the enrollee has not complied with Subsection (a), an action under this section shall not be dismissed by the court, but the court may, in its discretion, order the parties to submit to an independent review, mediation, or other nonbinding alternative dispute resolution and may abate the action for a period of not to exceed 30 days for such purposes. Such orders of the court shall be the sole remedy available to a party complaining of an enrollee's failure to comply with Subsection (a). Evidence of such internal review or appeal, independent review, mediation, or alternative dispute resolution or the results of same shall be inadmissible for any purpose in any action between an enrollee and a health insurance carrier, health maintenance organization, or managed care entity or an employee, agent, ostensible agent, or representative of such a carrier, organization, or entity.

(e) The enrollee is not required to comply with Subsection (c) and no abatement or other order pursuant to Subsection (d) for failure to comply shall be imposed if the enrollee has filed a pleading alleging in substance that:

(1) harm to the enrollee has already occurred because of the conduct of the health insurance carrier, health maintenance organization, or managed care entity or because of an act or omission of an employee, agent, ostensible agent, or representative of such carrier, organization, or entity for whose conduct it is liable under Section 88.002(b); and

(2) the review would not be beneficial to the enrollee, unless the court, upon motion by a defendant carrier, organization, or entity finds after hearing that such pleading was not made in good faith, in which case the court may enter an order pursuant to Subsection (d).

(f) If the insured or enrollee or the insured's or enrollee's representative seeks to exhaust the appeals and review or provides notice, as required by Subsection (a), before the statute of limitations applicable to a claim against a managed care entity has expired, the limitations period is tolled until the later of:

(1) the 30th day after the date the insured or enrollee or the insured's or enrollee's representative has exhausted the process for appeals and review applicable under the utilization review requirements; or

(2) the 40th day after the date the insured or enrollee or the insured's or enrollee's representative gives notice under Subsection (a)(2)(A).

(g) This section does not prohibit an insured or enrollee from pursuing other appropriate remedies, including injunctive relief, a declaratory judgment, or relief available under law, if the requirement of exhausting the process for appeal and review places the insured's or enrollee's health in serious jeopardy.

SECTION 2. Section 6, Article 21.58A, Insurance Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The procedures for appeals shall be reasonable and shall include the following:

(1) a provision that an enrollee, a person acting on behalf of the enrollee, or the enrollee's physician or health care provider may appeal the adverse determination and shall be provided, on request, a clear and concise statement of the clinical basis for the adverse determination;

(2) a list of documents needed to be submitted by the appealing party to the utilization review agent for the appeal;

(3) a provision that appeal decisions shall be made by a physician, provided that, if the appeal is denied and within 10 working days the health care provider sets forth in writing good cause for having a particular type of a specialty provider review the case, the denial shall be reviewed by a health care provider in the same or similar specialty as typically manages the medical condition, procedure, or treatment under discussion for review of the adverse determination;

(4) in addition to the written appeal, a method for an expedited appeal procedure for emergency care denials and denials of continued stays for hospitalized patients, which shall include a health care provider who has not previously reviewed the case; such appeal must be completed no later than one working day following the day on which the appeal, including all information necessary to complete the appeal, is made to the utilization review agent; and

(5) written notification to the appealing party of the determination of the appeal, as soon as practical, but in no case later than the 30th day after the date the utilization agent receives ~~[30 days after receiving all the required documentation of]~~ the appeal. If the appeal is denied, the written notification shall include a clear and concise statement of:

(A) the clinical basis for the appeal's denial;

(B) ~~and~~ the specialty of the physician making the denial; and

(C) notice of the appealing party's right to seek review of the denial by an independent review organization under Section 6A of this article and the procedures for obtaining that review.

(c) Notwithstanding any other law, in a circumstance involving an enrollee's life-threatening condition, the enrollee is entitled to an immediate appeal to an independent review organization as provided by Section 6A of this article and is not required to comply with procedures for an internal review of the utilization review agent's adverse determination. For purposes of this section, "life-threatening condition" means a disease or other medical condition with respect to which death is probable unless the course of the disease or condition is interrupted.

SECTION 3. Article 21.58A, Insurance Code, is amended by adding Section 6A to read as follows:

Sec. 6A. INDEPENDENT REVIEW OF ADVERSE DETERMINATIONS.

A utilization review agent shall:

(1) permit any party whose appeal of an adverse determination is denied by the utilization review agent to seek review of that determination by an independent review organization assigned to the appeal in accordance with Article 21.58C of this code;

(2) provide to the appropriate independent review organization not later than the third business day after the date that the utilization review agent receives a request for review a copy of:

(A) any medical records of the enrollee that are relevant to the review;

(B) any documents used by the plan in making the determination to be reviewed by the organization;

(C) the written notification described by Section 6(b)(5) of this article;

(D) any documentation and written information submitted to the utilization review agent in support of the appeal; and

(E) a list of each physician or health care provider who has provided care to the enrollee and who may have medical records relevant to the appeal;

(3) comply with the independent review organization's determination with respect to the medical necessity or appropriateness of health care items and services for an enrollee; and

(4) pay for the independent review.

SECTION 4. Section 8, Article 21.58A, Insurance Code, is amended by adding Subsection (f) to read as follows:

(f) Confidential information in the custody of a utilization review agent may be provided to an independent review organization, subject to rules and standards adopted by the commissioner under Article 21.58C of this code.

SECTION 5. Section 9(a)(3), Texas Health Maintenance Organization Act (Article 20A.09, Vernon's Texas Insurance Code), is amended to read as follows:

(3) An evidence of coverage shall contain:

(A) no provisions or statements which are unjust, unfair, inequitable, misleading, deceptive, which encourage misrepresentation, or which are untrue, misleading, or deceptive as defined in Section 14 of this Act; and

(B) a clear and complete statement, if a contract, or a reasonably complete facsimile, if a certificate, of:

(i) the medical, health care services, or single health care service and the issuance of other benefits, if any, to which the enrollee is entitled under the health care plan or single health care service plan;

(ii) any limitation on the services, kinds of services, benefits, or kinds of benefits to be provided, including any deductible or co-payment feature;

(iii) where and in what manner information is available as to how services may be obtained; and

(iv) a clear and understandable description of the health maintenance organization's methods for resolving enrollee complaints, including the enrollee's right to appeal denials of an adverse determination, as that term is defined by Section 12A of this Act (Article 20A.12A, Vernon's Texas Insurance Code), to an independent review organization and the procedures for making an appeal to an independent review organization. Any subsequent changes may be evidenced in a separate document issued to the enrollee.

SECTION 6. Section 12, Texas Health Maintenance Organization Act (Article 20A.12, Vernon's Texas Insurance Code), is amended to read as follows:

Art. 20A.12. COMPLAINT SYSTEM. (a) Every health maintenance organization shall establish and maintain a complaint system to provide reasonable procedures for the resolution of oral and written complaints initiated by enrollees concerning health care services.

(b) The commissioner [~~or board~~] may examine the [~~such~~] complaint system.

SECTION 7. The Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) is amended by adding Section 12A to read as follows:

Sec. 12A. REVIEW OF ADVERSE DETERMINATIONS. (a) The complaint system required by Section 12 of this Act (Article 20A.12, Vernon's Texas Insurance Code) must include:

(1) notification to the enrollee of the enrollee's right to appeal an adverse determination to an independent review organization;

(2) notification to the enrollee of the procedures for appealing an adverse determination to an independent review organization; and

(3) notification to an enrollee who has a life-threatening condition of the enrollee's right to immediate review by an independent review organization and the procedures to obtain that review.

(b) The provisions of Article 21.58A, Insurance Code, that relate to independent review apply to a health maintenance organization under this section as if the health maintenance organization were a utilization review agent.

(c) In this section:

(1) "Adverse determination" means determination by a health maintenance organization that the health care services furnished or proposed to be furnished to an enrollee are not medically necessary or are not appropriate in the allocation of health care resources.

(2) "Independent review organization" means an organization selected as provided under Article 21.58C, Insurance Code.

(3) "Life-threatening condition" has the meaning assigned by Section 6, Article 21.58A, Insurance Code.

SECTION 8. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.58C to read as follows:

Art. 21.58C. STANDARDS FOR INDEPENDENT REVIEW ORGANIZATIONS

Sec. 1. DEFINITIONS. In this article:

(1) "Life-threatening condition" has the meaning assigned by Section 6, Article 21.58A, of this code.

(2) "Payor" has the meaning assigned by Section 2, Article 21.58A, of this code.

Sec. 2. CERTIFICATION AND DESIGNATION OF INDEPENDENT REVIEW ORGANIZATIONS. (a) The commissioner shall:

(1) promulgate standards and rules for:

(A) the certification, selection, and operation of independent review organizations to perform independent review described by Section 6, Article 21.58A, of this code; and

(B) the suspension and revocation of the certification;

(2) designate annually each organization that meets the standards as an independent review organization;

(3) charge payors fees in accordance with this article as necessary to fund the operations of independent review organizations; and

(4) provide ongoing oversight of the independent review organizations to ensure continued compliance with this article and the standards and rules adopted under this article.

(b) The standards required by Subsection (a)(1) of this section must ensure:

(1) the timely response of an independent review organization selected under this article;

(2) the confidentiality of medical records transmitted to an independent review organization for use in independent reviews;

(3) the qualifications and independence of each health care provider or physician making review determinations for an independent review organization;

(4) the fairness of the procedures used by an independent review organization in making the determinations; and

(5) timely notice to enrollees of the results of the independent review, including the clinical basis for the determination.

(c) The standards adopted under Subsection (a)(1) of this section must include standards that require each independent review organization to make its determination:

(1) not later than the earlier of:

(A) the 15th day after the date the independent review organization receives the information necessary to make the determination; or

(B) the 20th day after the date the independent review organization receives the request that the determination be made; and

(2) in the case of a life-threatening condition, not later than the earlier of:

(A) the fifth day after the date the independent review organization receives the information necessary to make the determination; or

(B) the eighth day after the date the independent review organization receives the request that the determination be made.

(d) To be certified as an independent review organization under this article, an organization must submit to the commissioner an application in the form required by the commissioner. The application must include:

(1) for an applicant that is publicly held, the name of each stockholder or owner of more than five percent of any stock or options;

(2) the name of any holder of bonds or notes of the applicant that exceed \$100,000;

(3) the name and type of business of each corporation or other organization that the applicant controls or is affiliated with and the nature and extent of the affiliation or control;

(4) the name and a biographical sketch of each director, officer, and executive of the applicant and any entity listed under Subdivision (3) of this subsection and a description of any relationship the named individual has with:

(A) a health benefit plan;

(B) a health maintenance organization;

(C) an insurer;

(D) a utilization review agent;

(E) a nonprofit health corporation;

(F) a payor;

(G) a health care provider; or

(H) a group representing any of the entities described by Paragraphs (A) through (G) of this subdivision;

(5) the percentage of the applicant's revenues that are anticipated to be derived from reviews conducted under Section 6A, Article 21.58A, of this code;

(6) a description of the areas of expertise of the health care professionals making review determinations for the applicant; and

(7) the procedures to be used by the independent review organization in making review determinations with respect to reviews conducted under Section 6A, Article 21.58A, of this code.

(e) The independent review organization shall annually submit the information required by Subsection (d) of this section. If at any time there is a material change in the information included in the application under Subsection (d) of this section, the independent review organization shall submit updated information to the commissioner.

(f) An independent review organization may not be a subsidiary of, or in any way owned or controlled by, a payor or a trade or professional association of payors.

(g) An independent review organization conducting a review under Section 6A, Article 21.58A, of this code is not liable for damages arising from the determination made by the organization. This subsection does not apply to an act or omission of the independent review organization that is made in bad faith or that involves gross negligence.

SECTION 9. Chapter 88, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. An action that accrues before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 10. (a) The change in law made by Sections 2-4 and 6-8 of this Act applies only to an adverse determination of a utilization review agent or health maintenance organization made on or after the effective date of this Act.

(b) The change in law made by Section 5 of this Act to Section 9, Texas Health Maintenance Organization Act (Article 20A.09, Vernon's Texas Insurance Code), applies only to an evidence of coverage that is delivered, issued for delivery, or renewed on or after January 1, 1998. An evidence of coverage that is delivered, issued for delivery, or renewed before January 1, 1998, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 11. This Act takes effect September 1, 1997.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment No. 1

Amend SECTION 1 of CSSB 386 by striking Sec. 88.001(6) in its entirety and substituting the following:

(6) "Health insurance carrier" means an authorized insurance company that issues policies of accident and sickness insurance under Section 1, Chapter 397, Acts of the 54th Legislature, 1955 (Article 3.70-1, Vernon's Texas Insurance Code).

Floor Amendment No. 2

Amend CSSB 386 as follows:

(1) In Section 88.001(8), Civil Practice and Remedies Code, as added by SECTION 1 of the bill (page 2, line 15, House Committee Printing), before "acting on behalf of its employees", insert "purchasing coverage or".

(2) In Section 88.002, Civil Practice and Remedies Code, as added by SECTION 1 of the bill (page 4, between lines 6 and 7, House Committee Printing), add a new Subsection (d) to read as follows:

(d) This chapter does not create any liability on the part of an employer, an employer group purchasing organization, or a pharmacy licensed by the Texas State Board of Pharmacy that purchases coverage or assumes risk on behalf of its employees.

(3) In Section 88.002, Civil Practice and Remedies Code, as added by SECTION 1 of the bill (page 4, line 7, House Committee Printing), reletter Subsection (d) as Subsection (e).

(4) In Section 88.002, Civil Practice and Remedies Code, as added by SECTION 1 of the bill (page 4, line 13, House Committee Printing), reletter Subsection (e) as Subsection (f).

(5) In Section 88.002, Civil Practice and Remedies Code, as added by SECTION 1 of the bill (page 4, line 21, House Committee Printing), reletter Subsection (f) as Subsection (g).

(6) In Section 88.002, Civil Practice and Remedies Code, as added by SECTION 1 of the bill (page 5, line 1, House Committee Printing), reletter Subsection (g) as Subsection (h).

(7) In Section 88.002, Civil Practice and Remedies Code, as added by SECTION 1 of the bill (page 5, line 9, House Committee Printing), reletter Subsection (h) as Subsection (i).

(8) In Section 88.003(d), Civil Practice and Remedies Code, as added by SECTION 1 of the bill (page 6, lines 21 and 22, House Committee Printing), strike "an independent review, mediation," and substitute "an independent review or mediation".

Floor Amendment No. 3

Amend CSSB 386 as follows:

Amend SECTION 1, Sec. 88.002 by adding a new subsection (c) and relettering the remaining sections appropriately:

(c) It shall be a defense to any action asserted against a health insurance carrier, health maintenance organization, or other managed care entity for a health care plan that:

(1) neither the health insurance carrier, health maintenance organization, or other managed care entity, nor any employee, agent, ostensible agent, or representative for whose conduct such health insurance carrier, health maintenance organization or other managed care entity is liable under Section 88.002(b), controlled, influenced, or participated in the health care treatment decision, and;

(2) the health insurance carrier, health maintenance organization, or other managed care entity did not deny or delay payment for any treatment prescribed or recommended by a provider to the insured or enrollee.

Amendment No. 4

Amend CSSB 386 as follows:

Amend Sec. 88.002 by adding a new subsection to read as follows:

An enrollee who files an action under this Chapter shall comply with the requirements of Section 13.01 of the Medical Liability and Insurance Improvement Act, Vernon's Texas Civil Statutes, as it relates to cost bonds, deposits and expert reports.

Amendment No. 5

Amend CSSB 386 as follows:

Amend Section 88.003(d) by striking the last sentence of that subsection which reads as follows:

"Evidence of such internal review of appeal, independent review, mediation, or alternative dispute resolution or the results of same shall be inadmissible for any purpose in any action between an enrollee and a health insurance carrier, health maintenance organization, or managed care entity or an employee, agent, ostensible agent, or representative of such a carrier, organization, or entity."

Amendment No. 6

Amend CSSB 386 page 13, line 25, by placing a period after the word "necessary" and striking the words "or are not appropriate in the allocation of health care resources."

The new (c)(1) shall read as follows: "Adverse determination" means determination by a health maintenance organization that the health care services furnished or proposed to be furnished to an enrollee are not medically necessary."

The amendments were read.

On motion of Senator Sibley and by unanimous consent, further consideration of the House amendments to **SB 386** was postponed to a time certain of 10:00 a.m. today.

Question—Shall the Senate concur in the House amendments to **SB 386**?

(President in Chair)

BILLS SIGNED

The President announced the signing of the following enrolled bills in the presence of the Senate after the captions had been read:

SB 330, SB 715, SB 884, SB 898, SB 900, SB 1422, SB 1490, SB 1751

CAPITOL PHYSICIAN

Senator Brown, on behalf of Senator Patterson, was recognized and presented Dr. P. J. Mock of La Porte as the "Doctor for the Day."

The Senate welcomed Dr. Mock and thanked him for his participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

SENATE BILL 206 WITH HOUSE AMENDMENTS

Senator Madla called **SB 206** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **SB 206** as follows:

(1) Insert the following sections, appropriately numbered:

SECTION ____ . Sections 1(b) and (c), Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), are amended to read as follows:

(b) The term "life insurance agent" for the purpose of this Act means any person or corporation that is an authorized agent of a legal reserve life insurance company, and any person who is a sub-agent of such agent, who acts as such, whether through an oral, written, or electronic communication or otherwise, in the solicitation of, negotiation for, or procurement of, or collection of premiums on, an insurance or annuity contract with a legal reserve life insurance company; except that the term "life insurance agent" shall not include:

(1) any regular salaried officer or employee of a legal reserve life insurance company, or of a licensed life insurance agent, who devotes substantially all of his or her time to activities other than the solicitation of applications for insurance or annuity contracts and receives no commission or other compensation directly dependent upon the business obtained, and who does not solicit or accept from the public applications for insurance or annuity contracts;

(2) employers or their officers or employees, or the trustees of any employee benefit plan, to the extent that such employers, officers, employees or trustees are engaged in the administration or operation of any program of employee benefits involving the use of insurance or annuities issued by a legal reserve life insurance company, provided that such employers, officers, employees or trustees are not in any manner compensated, directly or indirectly, by the legal reserve life insurance company issuing such insurance or annuity contracts;

(3) banks, savings and loan associations, or credit unions, or the officers and employees of banks, savings and loan associations, or credit unions, to the extent that such banks, savings and loan associations, credit unions, or officers and employees collect and remit premiums by charging same against accounts of depositors on the orders of such depositors;

(4) a ticket-selling agent of a public carrier with respect to accident life insurance tickets covering risks of travel; or

(5) an agent selling credit life, health and accident insurance issued exclusively in connection with credit transactions, or acting as agent or solicitor for health and accident insurance under license issued pursuant to the provisions of Article 21.14 of the Texas Insurance Code.

(c) The term "sub-agent" means any person, except a regular salaried officer or employee of a legal reserve life insurance company, or of a licensed life insurance agent, engaging in activities defined in Paragraph 1(b), above, who acts for or on behalf of a licensed life insurance agent, whether through an oral, written, or electronic communication or otherwise, in the solicitation of, negotiation for, or procurement or making of, or collection of premiums on, an insurance or annuity contract, whether or not he is designated by such agent as a sub-agent or a solicitor or by any other title. Each such sub-agent shall be deemed to be a life insurance agent, as defined above, and wherever, in succeeding Sections of this Act, the term "life insurance agent" is used, it shall include sub-agents, whether or not they are specifically mentioned. Each such sub-agent shall be subject to the provisions of this Act to the same extent as a life insurance agent.

SECTION ____ . Section 16(a), Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), is amended to read as follows:

(a) In this section, "accident and health insurance agent" means any person or corporation that is an authorized agent of a legal reserve life insurance company and who acts as such agent, whether through an oral, written, or electronic communication or otherwise, only in the solicitation of, negotiation for, procurement of, or collection of premiums on an accident and health insurance contract with a legal reserve life insurance company, but does not include:

(1) a regular salaried officer or employee of a legal reserve life insurance company, or of a licensed life or accident and health insurance agent, who devotes substantially all of his or her time to activities other than the solicitation of applications for insurance contracts and receives no commission or other compensation directly dependent upon the business obtained and who does not solicit or accept from the public applications for insurance contracts;

(2) employers or their officers or employees, or the trustees of any employee benefit plan, to the extent that those employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits involving the use of insurance issued by a legal reserve life insurance company, provided that those employers, officers, employees, or trustees are not in any manner compensated directly or indirectly by the legal reserve life insurance company issuing the insurance contracts;

(3) banks or their officers and employees to the extent that the banks, or their officers, and employees collect and remit premiums by charging the premiums against the account of a depositor on the orders of the depositor;

(4) a ticket-selling agent of a public carrier with respect to accident and health insurance tickets covering risks of travel; or

(5) an agent selling credit health and accident insurance issued exclusively in connection with credit transactions, or acting as agent or solicitor for health and accident insurance under a license issued under either Article 21.07, Article 21.07-1, or Article 21.14, Insurance Code.

(2) Renumber sections of the bill appropriately.

Amendment No. 2

Amend SB 206 by inserting a SECTION to read as follows, and renumbering existing SECTIONS appropriately:

SECTION __. Chapter 1, Insurance Code, is amended by adding Article 1.10F to read as follows:

Art. 1.10F. EXPUNCTION OF CERTAIN RECORDS. (a) In this article:

(1) "License" includes:

(A) a license, permit, certificate, approval, or registration issued by a state agency or any similar authorization required by law; or

(B) any part of an authorization described by Paragraph (A) of this subdivision.

(2) "Person" means an individual or partnership.

(b) A person is entitled to expunction of department records relating to a violation by the person of an article of this code, a rule adopted under this code, or any other law related to the practice of insurance in this state if:

(1) the person has not committed another violation during the six years following the date of the violation;

(2) the violation did not injure a policyholder or an insurance company;

(3) the violation did not result in the assessment of a monetary penalty against the person; and

(4) the violation did not involve fraud or criminal activity.

(c) A person who is entitled to expunction of a record under Subsection (b) of this article may file a petition for expunction with the commissioner.

(d) A person who files a petition for expunction of a department record shall pay an advance expunction fee to cover the costs of the expunction proceedings.

(e) On receipt of a petition for expunction, the commissioner shall set a hearing on the matter and give reasonable notice of the hearing to appropriate parties.

(f) If the commissioner finds that the person is entitled to expunction of any department record under Subsection (b) of this article, the commissioner shall issue an expunction order.

(g) After issuance of an expunction order:

(1) the department may not:

(A) release, disseminate, or use the expunged record:

(i) in considering whether to approve or deny the issuance to the person of a new or renewal license; or

(ii) in answering inquiries from another state in relation to the person applying for a new or renewal license in that state; or

(B) include the expunged record in any database after the date of the expunction order; and

(2) the person for whom the commissioner grants expunction may deny the occurrence of the violation and the existence of the expunction order.

(h) The commissioner shall adopt rules to implement this article.

Floor Amendment No. 1 on Third Reading

Amend SB 206 on third reading by adding a new section, appropriately numbered to read as follows, and renumbering existing sections of the bill appropriately:

SECTION ____ . Article 21.14, Insurance Code, is amended by adding Section 20B to read as follows:

Sec. 20B. FULL-TIME SOLICITORS; EMPLOYEES OF LICENSED AGENTS. (a) Any actual full-time salaried employee of any agent licensed under this article may solicit or receive an application for the sale of insurance within the scope of the license of the agent through an oral, written, or electronic communication if the employee is registered with the commissioner in the manner provided by, and subject to the requirements and disciplinary provisions of, Section 20A of this article.

(b) Before an employee of an agent may be registered as provided by this section, the licensed agent shall make any certification required to be made by an insurance carrier under Section 20A.

(c) The commissioner shall adopt rules to implement this section.

Floor Amendment No. 2 on Third Reading

Amend SB 206, on third reading, in Section 3 of the bill, added Article 21.15-7, Insurance Code, the last sentence of that article (page 5,

line 13, committee printing), following "independent agents," insert "life and health agents."

The amendments were read.

Senator Madla moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 206** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Madla, Chair; Lucio, Harris, Shapleigh, and Haywood.

(Senator Duncan in Chair)

SENATE BILL 758 WITH HOUSE AMENDMENTS

Senator Shapleigh called **SB 758** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 758** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the offense of criminal mischief involving graffiti and the regulation of customer access to aerosol paint.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 28.03, Penal Code, is amended to read as follows:

Sec. 28.03. CRIMINAL MISCHIEF. (a) A person commits an offense if, without the effective consent of the owner:

(1) he intentionally or knowingly damages or destroys the tangible property of the owner;

(2) he intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person; or

(3) he intentionally or knowingly places graffiti [~~makes markings, including inscriptions, slogans, drawings, or paintings,~~] on the tangible property of the owner.

(b) Except as provided by Subsection (g) [(f)], an offense under Subsection (a)(1) or (a)(2) [~~this section~~] is:

(1) a Class C misdemeanor if:

(A) the amount of pecuniary loss is less than \$20; or

(B) except as provided in Subdivision (3)(B), it causes substantial inconvenience to others;

(2) a Class B misdemeanor if the amount of pecuniary loss is \$20 or more but less than \$500;

(3) a Class A misdemeanor if the amount of pecuniary loss is:

(A) \$500 or more but less than \$1,500; or

(B) less than \$1,500 and the actor causes in whole or in part impairment or interruption of public communications, public transportation, public water, gas, or power supply, or other public service, or causes to be diverted in whole, in part, or in any manner, including installation or removal of any device for any such purpose, any public communications, public water, gas, or power supply;

(4) a state jail felony if the amount of pecuniary loss is \$1,500 or more but less than \$20,000;

(5) a felony of the third degree if the amount of the pecuniary loss is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the amount of pecuniary loss is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the amount of pecuniary loss is \$200,000 or more.

(c) Except as provided by Subsection (g), an offense under Subsection (a)(3) is:

(1) a Class B misdemeanor if:

(A) the amount of pecuniary loss is less than \$20; or

(B) except as provided in Subdivision (3)(B), it causes substantial inconvenience to others;

(2) a Class A misdemeanor if the amount of pecuniary loss is \$20 or more but less than \$500;

(3) a state jail felony if the amount of pecuniary loss is \$500 or more but less than \$1,500;

(4) a felony of the third degree if the amount of pecuniary loss is \$1,500 or more but less than \$20,000;

(5) a felony of the second degree if the amount of the pecuniary loss is \$20,000 or more but less than \$100,000; or

(6) a felony of the first degree if the amount of pecuniary loss is \$100,000 or more.

(d) For the purposes of this section, it shall be presumed that a person who is receiving the economic benefit of public communications, public water, gas, or power supply, has knowingly tampered with the tangible property of the owner if the communication or supply has been:

(1) diverted from passing through a metering device; or

(2) prevented from being correctly registered by a metering device; or

(3) activated by any device installed to obtain public communications, public water, gas, or power supply without a metering device.

(e) [(d)] The term "public communication, public transportation, public water, gas, or power supply, or other public service" shall mean, refer to, and include any such services subject to regulation by the Public Utility Commission of Texas, the Railroad Commission of Texas, or the Texas Natural Resource Conservation Commission or any such services enfranchised by the State of Texas or any political subdivision thereof.

(f) [(e)] When more than one item of tangible property, belonging to one or more owners, is damaged, destroyed, or tampered with in violation of this section pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the amounts of pecuniary loss to property resulting from the damage to, destruction of, or tampering with the property may be aggregated in determining the grade of the offense.

(g) Except as provided by Subsection (h), an [(f)-An] offense under this section is a state jail felony if the damage or destruction is inflicted on a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs and the amount of the pecuniary loss to real property or to tangible personal property is less than \$20,000.

(h) Subsection (g) does not apply to the punishment for an offense under Subsection (a)(3) if the amount of pecuniary loss is \$1,500 or more but less than \$20,000.

(i) In this section, "graffiti" means a word, figure, mark, painting, covering, drawing, slogan, design, or other inscription.

SECTION 2. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.0171 to read as follows:

Art. 102.0171. COURT COSTS: GRAFFITI ERADICATION FUNDS.

(a) A defendant convicted of an offense under Section 28.03(a)(3), Penal Code, in a justice court, county court, county court at law, or a district court shall pay a \$5 graffiti eradication fee as a cost of court. The governing body of a municipality by ordinance may create a municipal graffiti eradication fund and may require a defendant convicted of an offense under Section 28.03(a)(3), Penal Code, in a municipal court to pay a \$5 graffiti eradication fee as a cost of court.

(b) In this article, a person is considered convicted if:

(1) a sentence is imposed on the person;

(2) the person receives community supervision, including deferred adjudication; or

(3) the court defers final disposition of the person's case.

(c) The clerks of the respective courts shall collect the costs and pay them to the county or municipal treasurer, as appropriate, or to any other official who discharges the duties commonly delegated to the county or municipal treasurer, as appropriate, for deposit in a fund to be known as the county graffiti eradication fund or a fund to be known as the municipal graffiti eradication fund, as appropriate. A fund designated by this subsection may be used only to:

(1) repair damage caused by the commission of offenses under Section 28.03(a)(3), Penal Code;

(2) provide educational and intervention programs designed to prevent individuals from committing offenses under Section 28.03(a)(3), Penal Code; and

(3) provide to the public rewards for identifying and aiding in the apprehension and prosecution of offenders who commit offenses under Section 28.03(a)(3), Penal Code.

(d) The county graffiti eradication fund shall be administered by or under the direction of the commissioners court. The municipal graffiti eradication fund shall be administered by or under the direction of the governing body of the municipality.

SECTION 3. Section 54.042, Family Code, is amended to read as follows:

Sec. 54.042. LICENSE SUSPENSION. (a) A juvenile court, in a disposition hearing under Section 54.04 ~~[of this code]~~, shall:

(1) order the Department of Public Safety to suspend a child's driver's license or permit, or if the child does not have a license or permit, to deny the issuance of a license or permit to the child if the court finds that the child has engaged in conduct that violates a law of this state enumerated in Section ~~521.342(a), Transportation Code [24(a-1), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes)]~~; or

(2) notify the Department of Public Safety of the adjudication, if the court finds that the child has engaged in conduct that violates a law of this state enumerated in Section ~~521.372(a), Transportation Code [24B(b), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes)]~~.

(b) A juvenile court, in a disposition hearing under Section 54.04, may order the Department of Public Safety to suspend a child's driver's license or permit, or if the child does not have a license or permit to deny the issuance of a license or permit to the child, if the court finds that the child has engaged in conduct that violates Section 28.03(a)(3), Penal Code.

(c) The order under Subsection (a)(1) ~~[of this section]~~ shall specify a period of suspension or denial that is until the child reaches the age of 19 or for a period of 365 days, whichever is longer.

(d) [(c)] The order under Subsection (b) shall specify a period of suspension or denial that is:

(1) for a period not to exceed 365 days; or

(2) if the court finds the child has been previously adjudicated as having engaged in conduct violating Section 28.03(a)(3), Penal Code, until the child reaches the age of 19 or for a period not to exceed 365 days, whichever is longer.

(e) A child whose driver's license or permit has been suspended or denied pursuant to this section may, if the child is otherwise eligible for, and fulfills the requirements for issuance of, a provisional driver's license or permit under Chapter 521, Transportation Code ~~[Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes)]~~, apply for and receive an occupational license in accordance with the provisions of Subchapter L of that chapter ~~[Section 23A, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes)]~~.

(f) ~~[(d)]~~ A juvenile court, in a disposition hearing under Section 54.04 ~~[of this code]~~, may order the Department of Public Safety to suspend a child's driver's license or permit or, if the child does not have a license or permit, to deny the issuance of a license or permit to the child for

a period not to exceed 12 months if the court finds that the child has engaged in conduct in need of supervision or delinquent conduct other than the conduct described by Subsection (a) ~~[of this section]~~.

(g) ~~(e)~~ A juvenile court that places a child on probation under Section 54.04 ~~[of this code]~~ may require as a reasonable condition of the probation that if the child violates the probation, the court may order the Department of Public Safety to suspend the child's driver's license or permit or, if the child does not have a license or permit, to deny the issuance of a license or permit to the child for a period not to exceed 12 months. The court may make this order if a child that is on probation under this condition violates the probation. A suspension under this subsection is cumulative of any other suspension under this section.

SECTION 4. Subchapter B, Chapter 485, Health and Safety Code, is amended by adding Section 485.019 to read as follows:

Sec. 485.019. RESTRICTION OF ACCESS TO AEROSOL PAINT.

(a) A business establishment that holds a permit under Section 485.012 and that displays aerosol paint shall display the paint:

(1) in a place that is in the line of sight of a cashier or in the line of sight from a workstation normally continuously occupied during business hours;

(2) in a manner that makes the paint accessible to a patron of the business establishment only with the assistance of an employee of the establishment; or

(3) in an area electronically protected, or viewed by surveillance equipment that is monitored, during business hours.

(b) This section does not apply to a business establishment that has in place a computerized checkout system at the point of sale for merchandise that alerts the cashier that a person purchasing aerosol paint must be over 18 years of age.

(c) A court may issue a warning to a business establishment or impose a civil penalty of \$50 on the business establishment for a first violation of this section. After receiving a warning or penalty for the first violation, the business establishment is liable to the state for a civil penalty of \$100 for each subsequent violation.

(d) For the third violation of this section in a calendar year, a court may issue an injunction prohibiting the business establishment from selling aerosol paint for a period of not more than two years. A business establishment that violates the injunction is liable to the state for a civil penalty of \$100, in addition to any other penalty authorized by law, for each day the violation continues.

(e) If a business establishment fails to pay a civil penalty under this section, the court may issue an injunction prohibiting the establishment from selling aerosol paint until the establishment pays the penalty, attorney's fees, and court costs.

(f) The attorney general or the district or county attorney for the county in which a violation of this section is alleged to have occurred may file suit for the issuance of a warning, the collection of a penalty, or the issuance of an injunction.

(g) A penalty collected under this section shall be sent to the comptroller for deposit in the state treasury to the credit of the general revenue fund.

SECTION 5. Subchapter N, Chapter 521, Transportation Code, is amended by adding Section 521.314 to read as follows:

Sec. 521.314. SUSPENSION FOR CERTAIN CRIMINAL MISCHIEF; LICENSE DENIAL. (a) A court may order the department to suspend a person's driver's license on conviction of an offense under Section 28.03(a)(3), Penal Code.

(b) A court may order the department to deny an application for reinstatement or issuance of a driver's license to a person convicted of an offense under Section 28.03(a)(3), Penal Code, who, on the date of the conviction, did not hold a driver's license.

(c) The period of suspension under this section is one year after the date of a final conviction. The period of license denial is one year after the date the person applies to the department for reinstatement or issuance of a driver's license.

(d) The department may not reinstate a driver's license suspended under Subsection (a) unless the person whose license was suspended applies to the department for reinstatement.

(e) A person whose license is suspended under Subsection (a) remains eligible to receive an occupational license under Subchapter L, Chapter 521.

(f) For the purposes of this section, a person is convicted of an offense regardless of whether sentence is imposed or the person is placed on community supervision for the offense under Article 42.12, Code of Criminal Procedure.

SECTION 6. (a) The change in law made by this Act applies only to an offense committed or, for the purposes of Title 3, Family Code, to conduct that occurs on or after the effective date of this Act. For purposes of this section, an offense is committed on or after the effective date of this Act if every element of the offense occurs on or after the effective date and conduct violating a penal law of this state occurs on or after the effective date of this Act if every element of the violation occurs on or after that date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. Conduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 1997.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 2

Amend CSSB 758 as follows:

(1) On page 9, line 23, in proposed Section 485.019(f), Health and Safety Code, between "The" and "district or county attorney", strike "attorney general or the".

(2) On page 9, line 25, in proposed Section 485.019(f), Health and Safety Code, between "occurred" and "may file", insert ", or the attorney general, if requested by the district or county attorney for that county,".

Floor Amendment No. 3

Amend CSSB 758 as follows:

(1) Strike SECTION 1 of the bill.

(2) Insert the following new SECTIONS to read as follows:

SECTION ____ . Section 28.03(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, without the effective consent of the owner:

(1) he intentionally or knowingly damages or destroys the tangible property of the owner;

(2) he intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person; or

(3) he intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or painting, other than graffiti, on the tangible property of the owner.

SECTION ____ . Chapter 28, Penal Code, is amended by adding Section 28.08 to read as follows:

Sec. 28.08. GRAFFITI. (a) A person commits an offense if, without the effective consent of the owner, the person intentionally or knowingly places graffiti o the tangible property of the owner.

(b) In this section, "graffiti" means a word, figure, mark, painting, covering, drawing, slogan, design, etching, or other inscription.

(c) When more than one item of tangible property, belonging to one or more owners, is property on which graffiti is placed in violation of this section pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the amounts of pecuniary loss to property resulting from the placement of the graffiti may be aggregated in determining the grade of the offense.

(d) Except as provided by Subsection (e), an offense under this section is:

(1) a Class B misdemeanor if the amount of pecuniary loss is less than \$20;

(2) a Class A misdemeanor if the amount of pecuniary loss is \$20 or more but less than \$500;

(3) a state jail felony if the amount of pecuniary loss is \$500 or more but less than \$1,500;

(4) a felony of the third degree if the amount of the pecuniary loss is \$1,500 or more but less than \$20,000;

(5) a felony of the second degree if the amount of pecuniary loss is \$20,000 or more but less than \$100,000; or

(6) a felony of the first degree if the amount of pecuniary loss is \$100,000 or more.

(e) An offense under this section is a state jail felony if the graffiti is placed on a place of worship or human burial, a public monument, or community center that provides medical, social, or educational programs and the amount of the pecuniary loss to real property or to tangible personal property is less than \$1,500.

(3) Strike "28.03(a)(3), Penal Code" everywhere it appears and substitute "28.08, Penal Code".

Floor Amendment No. 4

Amend CSSB 758 by adding appropriately numbered SECTIONS to read as follows and by renumbering existing SECTIONS accordingly:

SECTION __. Section 53.03, Family Code, is amended by adding Subsection (g) to read as follows:

(g) If the child is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision that violates Section 28.03(a)(3), Penal Code, deferred prosecution under this section may include:

(1) voluntary attendance in a class with instruction in self-responsibility and empathy for a victim of an offense conducted by a local juvenile probation department, if the class is available; and

(2) voluntary restoration of the property damaged by the child by removing or painting over any markings made by the child, if the owner of the property consents to the restoration.

SECTION __. Chapter 54, Family Code, is amended by adding Section 54.046 to read as follows:

Sec. 54.046. CONDITIONS OF PROBATION FOR DAMAGING PROPERTY WITH GRAFFITI. (a) If a juvenile court places on probation under Section 54.04(d) a child adjudicated as having engaged in conduct in violation of Section 28.03(a)(3), Penal Code, in addition to other conditions of probation, the court may, with consent of the owner of the property, order the child as a condition of probation to restore the property by removing or painting over any markings made by the child on the property.

(b) In addition to a condition imposed under Subsection (a), the court may require the child as a condition of probation to attend a class with instruction in self-responsibility and empathy for a victim of an offense conducted by a local juvenile probation department.

Floor Amendment No. 1 on Third Reading

Amend CSSB 758 on third reading in SECTION 4 of the bill, at the end of proposed Section 485.019, Health and Safety Code, by adding the following:

(h) This section applies only to a business establishment that is located in a county with a population of 75,000 or more.

The amendments were read.

Senator Shapleigh moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 758** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Shapleigh, Chair; West, Zaffirini, Patterson, and Duncan.

(President in Chair)

**COMMITTEE SUBSTITUTE
SENATE BILL 1948 ON SECOND READING**

On motion of Senator Sibley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

CSSB 1948, Relating to the treatment of certain annuities as charitable gift annuities and the application of the Insurance Code and certain other laws to charitable gift annuities.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1948 ON THIRD READING**

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1948** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

CSSB 1948 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE
HOUSE BILL 4 ON THIRD READING**

Senator Armbrister moved that the regular order of business be suspended and that **CSHB 4** be placed on its third reading and final passage:

CSHB 4, Relating to funding public elementary and secondary schools and providing property tax relief and equity and to the imposition, administration, enforcement, and collection of, and allocation of the revenue from, various state and local taxes; providing penalties; making an appropriation.

The motion prevailed by the following vote: Yeas 23, Nays 7.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Carona, Duncan, Fraser, Harris, Lindsay, Lucio, Luna, Madla, Nixon, Ogden, Ratliff, Shapiro, Shapleigh, Sibley, Truan, Wentworth, West, Zaffirini.

Nays: Ellis, Gallegos, Galloway, Haywood, Moncrief, Nelson, Whitmire.

Absent-excused: Patterson.

CSHB 4 was read third time and was passed by the following vote: Yeas 22, Nays 8.

Yeas: Armbrister, Barrientos, Bivins, Brown, Carona, Duncan, Fraser, Harris, Lindsay, Lucio, Luna, Madla, Nixon, Ogden, Ratliff, Shapiro, Shapleigh, Sibley, Truan, Wentworth, West, Zaffirini.

Nays: Cain, Ellis, Gallegos, Galloway, Haywood, Moncrief, Nelson, Whitmire.

Absent-excused: Patterson.

GUESTS PRESENTED

Senator Ellis was recognized and introduced to the Senate his father Elijah Ellis, his mother Teresa Ellis, and his sister Dr. Melody Ellis.

The Senate welcomed its guests.

REMARKS ORDERED PRINTED

On motion of Senator Cain and by unanimous consent, the remarks by Senator Moncrief on **CSHB 4** were ordered reduced to writing and printed in the *Senate Journal* as follows:

Senator Moncrief: Mr. President, Members, I rise today to speak on the property tax relief proposal we have before us.

First of all, I would like to express my sincere appreciation to Senators Armbrister and Bivins as well as the other Members of the Select Committee on Tax Reform and Public School Finance for their commitment and hard work on this issue. You have crossed a large gulf full of sharks and emerged on the other side with a comprehensive product and relatively few bite marks . . . or at least few visible ones. I would also like to recognize the leadership and expertise of Lieutenant Governor Bullock and his staff in moving this process along.

What I would like to briefly concentrate on today is priorities. The bill before us has been discussed extensively in committee and in the media. We have heard a great deal about the relief it will offer to the property taxpayers of this state. I would like to focus, however, for the moment, on what we aren't paying for in this bill and what we are taking off of the table in the conference committee chaired by Senator Ratliff.

To pay for property tax relief, we reserved approximately \$1 billion from the current budget and set it aside. This is money that would have been available for appropriation with no increase in taxes or fees. If we were to add that money back into the budget, here is an idea of what a billion dollars could buy.

1. The complete Back to Basics Initiative, Senator Ogden, brought to us by the Chancellors of higher education in the state.

2. A meaningful pay increase, Senator Barrientos, for the state employees whose interests you so ably champion.
3. Substantial facilities relief, even more than in the bill before us, Senator Bivins, for public schools in this state.
4. Almost total assistance, Senator Zaffirini, for those individuals who are on waiting lists to receive community care for the disabled, mentally retarded, or elderly. Those who wish, against all the odds, to live independently and not in a nursing home or other facility.
5. A substantial health plan, Senator Sibley, for the children of our state.

Obviously, we couldn't pay for all of these at the same time, but with \$1 billion, Senator Armbrister, we could make substantial progress toward addressing some of the true ills of our society instead of just putting Band-Aids on the symptoms.

We could have done this—and here's what I want to stress—within available revenue and with no tax increases for the citizens of this state.

Priorities, Members. What we are getting with this plan is, at best, a modest amount of property tax relief. For the average homeowner in Fort Worth, this would translate to about \$140 per year without the homestead exemption. That is just under \$12 per month. In return for this modest property tax relief, we may all have to pay more for medical, legal, and accounting services as well as for items purchased from the small businesses of our state.

When you think about it, Members, what we're doing here is putting pennies in one pocket and pulling out nickels and dimes from the other pocket. The problem is it's the same pair of pants.

Over the past week, I have made every effort to solicit input from my constituents on this issue. Almost all of the feedback I have gotten, however, has been negative. It hasn't exactly reflected a ground swell in support of this amount of property tax relief. Many feel that even if this bill passes, property taxes will over time creep back up and we will be right back where we started.

Although I would love to give the citizens of this state meaningful property tax relief, I cannot support the bill we have before us today. Given the price involved, I do not believe it is consistent with the priorities of this state or those of my Senate district.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Saturday, May 10, 1997

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HB 2577, Relating to the Texas Department of Housing and Community Affairs.

HJR 31, Proposing a constitutional amendment permitting an encumbrance against homestead property for certain extensions of equity credit.

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

GUEST PRESENTED

Senator Gallegos was recognized and introduced to the Senate Representative Paul Sadler.

The Senate welcomed Representative Sadler.

COMMITTEE SUBSTITUTE HOUSE JOINT RESOLUTION 4 ON THIRD READING

Senator Armbrister moved that the regular order of business be suspended and that **CSHJR 4** be placed on its third reading and final passage:

CSHJR 4, Proposing a constitutional amendment providing for certain priority and minimum funding for public schools, dedicating certain lottery proceeds to public education, authorizing certain taxes on entities, authorizing the creation of a commission to study efficiency in state government, and providing for transfer or further reduction of a limitation of school tax on homesteads of the elderly.

The motion prevailed by the following vote: Yeas 23, Nays 7.

Yeas: Armbrister, Barrientos, Bivins, Brown, Carona, Duncan, Fraser, Harris, Haywood, Lindsay, Lucio, Luna, Madla, Nixon, Ogden, Ratliff, Shapiro, Shapleigh, Sibley, Truan, Wentworth, West, Zaffirini.

Nays: Cain, Ellis, Gallegos, Galloway, Moncrief, Nelson, Whitmire.

Absent-excused: Patterson.

CSHJR 4 was read third time.

Senator Armbrister offered the following amendment to the resolution:

Floor Amendment No. 1

Amend **CSHJR 4** by adding the following appropriately numbered section:

SECTION __. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) Subsection (a). Section 35, Article III, of this constitution does not apply to H.B. No. 4, Acts of the 75th Legislature, Regular Session, 1997.

(b) This temporary provision is executed on adoption and expires January 1, 2003.

ARMBRISTER
BIVINS

The amendment was read and was adopted by unanimous consent.

CSHJR 4 as amended was finally passed by the following vote:
Yeas 23, Nays 7.

Yeas: Armbrister, Barrientos, Bivins, Brown, Carona, Duncan, Fraser, Harris, Haywood, Lindsay, Lucio, Luna, Madla, Nixon, Ogden, Ratliff, Shapiro, Shapleigh, Sibley, Truan, Wentworth, West, Zaffirini.

Nays: Cain, Ellis, Gallegos, Galloway, Moncrief, Nelson, Whitmire.

Absent-excused: Patterson.

(Senator Truan in Chair)

BILLS AND RESOLUTIONS SIGNED

The Presiding Officer announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

HB 16, HB 35, HB 101, HB 197, HB 320, HB 327, HB 384, HB 449, HB 485, HB 501, HB 581, HB 641, HB 646, HB 699, HB 736, HB 791, HB 922, HB 1025, HB 1050, HB 1312, HB 1532, HB 1545, HB 1901, HB 1902, HB 1999, HB 2015, HB 2193, HB 2373, HCR 207, HCR 233

SENATE BILL 386 WITH HOUSE AMENDMENTS

The Presiding Officer, Senator Truan in Chair, laid before the Senate as postponed business **SB 386** with House amendments. Consideration of the House amendments to the bill was postponed to a time certain of 10:00 a.m. today.

Question—Shall the Senate concur in the House amendments to **SB 386**?

Senator Sibley moved to concur in the House amendments to **SB 386**.

POINT OF ORDER

Senator Duncan raised a point of order that Senate Rule 7.21 requires House amendments to be distributed to the Members 24 hours prior to a motion to concur.

On motion of Senator Duncan and by unanimous consent, the point of order was withdrawn.

On motion of Senator Sibley and by unanimous consent, the motion to concur was withdrawn.

Question—Shall the Senate concur in the House amendments to **SB 386**?

**COMMITTEE SUBSTITUTE
SENATE BILL 775 ON SECOND READING**

On motion of Senator Nixon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

CSSB 775, Relating to eligibility for certain public assistance administered by health and human services agencies.

The bill was read second time.

Senator Nixon offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 775**, committee printing, on page 1, line 29 by inserting a new SECTION 2. to read as follows, and renumber the remaining SECTIONS appropriately:

SECTION 2. CHAPTER 22, Human Resources Code, is amended by adding a Section 22.032 to read as follows:

Sec. 22.032. CITIZENSHIP PROMOTION FOR OTHERWISE ELIGIBLE LEGAL IMMIGRANTS. (a) The department by rule shall develop a grant program to promote naturalization of lawfully present legal immigrants as of May 1, 1997 who are ineligible for public assistance solely because of their immigration status.

(b) To the extent funds are appropriated by the legislature, the program may provide grants for:

(1) Citizenship preparation assistance for legal immigrants who are ineligible for federal Supplemental Security Income or Food Stamps benefits, including:

(A) outreach to and information for legal immigrants about the rights and responsibilities of citizens, the process of naturalization, and the availability of citizenship services;

(B) support services for elderly or disabled legal immigrants in the naturalization process, including transportation and interpretation for Immigration and Naturalization Service interviews;

(C) assistance in completing the application for United States Citizenship; and

(D) instructions in civics, U.S. History and English as a second language necessary for citizenship examination.

The amendment was read and was adopted by a viva voce vote.

CSSB 775 as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 775 ON THIRD READING**

Senator Nixon moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 775** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

CSSB 775 was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1561 ON SECOND READING**

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

CSSB 1561, Relating to recording certain depositions.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1561 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1561** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

CSSB 1561 was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1938 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

CSSB 1938, Relating to the Hays County juvenile probation department.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1938 ON THIRD READING**

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1938** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

CSSB 1938 was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 710 ON SECOND READING**

On motion of Senator Sibley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 710, Relating to the implementation of federal reforms and the Texas Health Insurance Risk Pool.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 710 ON THIRD READING**

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 710** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

CSHB 710 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**MOTION TO PLACE
COMMITTEE SUBSTITUTE
SENATE BILL 1142 ON SECOND READING**

Senator Ellis asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

CSSB 1142, Relating to public access to certain underwriting guidelines used by insurers.

There was objection.

Senator Ellis then moved to suspend the regular order of business and take up **CSSB 1142** for consideration at this time.

The motion was lost by the following vote: Yeas 12, Nays 11. (Not receiving two-thirds vote of Members present)

Yeas: Cain, Ellis, Gallegos, Lucio, Madla, Moncrief, Shapleigh, Sibley, Truan, West, Whitmire, Zaffirini.

Nays: Carona, Duncan, Fraser, Galloway, Harris, Haywood, Lindsay, Nixon, Ogden, Shapiro, Wentworth.

Absent: Armbrister, Barrientos, Bivins, Brown, Luna, Nelson, Ratliff.

Absent-excused: Patterson.

HOUSE BILL 3459 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3459, Relating to environmental and health and safety audits; providing a penalty.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 3459 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3459** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

HB 3459 was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Shapleigh asked to be recorded as voting "Nay" on the final passage of the bill.

(Senator Brown in Chair)

HOUSE BILL 1782 ON SECOND READING

On motion of Senator Truan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1782, Relating to professional services in regard to certain state and local contracts and fund management.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1782 ON THIRD READING

Senator Truan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1782** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

HB 1782 was read third time and was passed by a viva voce vote.

HOUSE BILL 627 ON SECOND READING

On motion of Senator Truan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 627, Relating to proof of insurance filed with the Texas Department of Public Safety by certain motorists uninsured at the time of an accident.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 627 ON THIRD READING

Senator Truan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 627** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

HB 627 was read third time and was passed by a viva voce vote.

HOUSE BILL 324 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 324, Relating to the days and hours during which early voting by personal appearance is conducted in certain municipalities.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 324 ON THIRD READING

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 324** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

HB 324 was read third time and was passed by a viva voce vote.

HOUSE BILL 1989 ON SECOND READING

On motion of Senator Truan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1989, Relating to college student exchange programs with other nations.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1989 ON THIRD READING

Senator Truan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1989** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

HB 1989 was read third time and was passed by a viva voce vote.

HOUSE BILL 3356 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3356, Relating to the payment of funds to support the Early High School Graduation Scholarship Program.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 3356 ON THIRD READING

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3356** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

HB 3356 was read third time and was passed by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1212 ON SECOND READING

On motion of Senator Sibley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 1212, Relating to health insurance portability and availability and the implementation of certain federal reforms relating to health insurance portability and availability.

The bill was read second time.

Senator Cain offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 1212**, SECTION 1.03 page 6, art. 26.035., line 7 subsection (a)(8) after the word "state" and before the word "health" by inserting: "or political subdivision".

The amendment was read and was adopted by a viva voce vote.

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSHB 1212** as follows:

(1) Following SECTION 1.15 of the bill (page 10, between lines 36 and 37, committee printing) insert new Sections 1.16, 1.17, 1.18, 1.19 and 1.20 to read as follows:

"SECTION 1.16. Article 26.42, Insurance Code, is amended to read as follows:

Art. 26.42. SMALL OR LARGE EMPLOYER HEALTH BENEFIT PLANS. (a) A small or large employer carrier shall offer the following two health benefit plans as adopted by the commissioner:

- (1) the catastrophic care benefit plan; and
- (2) the basic coverage benefit plan.

(b) A small or large employer carrier may offer to a small employer additional benefit riders to either of the benefit plans.

(c) Subject to the provisions of this chapter, a small or large employer carrier may also offer to small employers any other health benefit plan authorized under this code. Article 26.06(c) does not apply to a health benefit plan offered to a small or large employer under this subsection.

SECTION 1.17. Article 26.43(a), Insurance Code, is amended to read as follows:

(a) The commissioner shall promulgate the benefits section of the catastrophic care benefit plan and the basic coverage benefit plan policy forms in accordance with Article 26.44A of this code and shall develop prototype policies for each of the benefit plans. For all other portions of these policy forms, a small or large employer carrier shall comply with Article 3.42 of this code as it relates to policy form approval and with the Texas Health Maintenance Organization Act (Article 20A.01 et seq., Vernon's Texas Insurance Code) as it relates to approval of an evidence of coverage. A small or large employer carrier may not offer these benefit plans through a policy form or evidence of coverage that does not comply with this chapter.

SECTION 1.18. Article 26.44, Insurance Code, is amended to read as follows:

Art. 26.44. RIDERS; FILING WITH COMMISSIONER. (a) A small or large employer carrier shall file with the commissioner, in a form and manner prescribed by the commissioner, riders to the small or large employer health benefit plans as allowed under Article 26.42 of this code to be used by the small or large employer carrier. A small or large employer carrier may use a rider filed under this article after the 30th day after the date the rider is filed unless the commissioner disapproves its use.

(b) The commissioner, after notice and an opportunity for a hearing, may disapprove the continued use by a small or large employer carrier of a rider if the rider does not meet the requirements of this chapter and other applicable statutes.

SECTION 1.19. Article 26.44A, Insurance Code, is amended to read as follows:

(a) The commissioner by rule shall establish the coverage requirements for the catastrophic care benefit plan and the basic coverage benefit plan. The commissioner shall develop prototype policies for use by small or large employer carriers that include all contractual provisions required to produce an entire contract in accordance with this article and this code.

SECTION 1.20. Article 26.44B, Insurance Code, is amended to read as follows:

Art. 26.44B. ALCOHOL AND SUBSTANCE ABUSE BENEFITS. If the small or large employer basic coverage benefit plan developed by the commissioner includes coverage for alcohol and substance abuse benefits, the employees of a small or large employer group may accept and small or large employer carriers may offer the basic coverage benefit plan without providing coverage for alcohol and substance abuse benefits if:

(1) at least 50 percent of the employees waive in writing the benefits and indicate in writing that they have undergone alcoholism or substance abuse treatment or counseling within the last three years; and

(2) the exclusion from coverage of alcohol and substance abuse applies to only those employees."

(2) Renumber the subsequent sections accordingly.

The amendment was read and was adopted by a viva voce vote.

CSHB 1212 as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1212 ON THIRD READING**

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1212** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

CSHB 1212 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE
HOUSE BILL 870 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 870, Relating to the authority of certain federal agents to enforce state law relating to public intoxication and driving while intoxicated.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 870 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 870** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

CSHB 870 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

HOUSE BILL 2311 ON SECOND READING

On motion of Senator Truan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2311, Relating to the reporting of health conditions in the workplace.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2311 ON THIRD READING

Senator Truan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2311** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

HB 2311 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

HOUSE BILL 1773 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1773, Relating to the residence homestead exemption from ad valorem taxation.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1773 ON THIRD READING

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1773** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

HB 1773 was read third time and was passed by a viva voce vote.

HOUSE BILL 1482 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1482, Relating to computer and telecommunications offenses; providing penalties.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 1482** as follows:

Amend SECTION 2. Section 33.02, Penal Code as follows:

On page 3, line 15, after the word "more.", insert the following subsection:

"(d) a person who is subject to prosecution under this section and any other section of this code may be prosecuted under either or both sections."

The amendment was read and was adopted by a viva voce vote.

HB 1482 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1482 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1482** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

HB 1482 was read third time and was passed by a viva voce vote.

HOUSE BILL 1638 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1638, Relating to participation and credit in, contributions to, and benefits and administration of the Texas County and District Retirement System.

The bill was read second time.

Senator Armbrister offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 1638** in SECTION 21 of the bill, amended Section 845.301(a), Government Code, by striking "Investment and management decisions concerning individual investments must be evaluated not in isolation but in the context of the investment portfolio as a whole and as part of an overall investment strategy consistent with the investment objectives of the retirement system." and substituting "Investment decisions are subject to the standard provided in the Texas Trust Code by Section 113.056(a), Property Code."

The committee amendment was read and was adopted by a viva voce vote.

HB 1638 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1638 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1638** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

HB 1638 was read third time and was passed by a viva voce vote.

HOUSE BILL 3134 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3134, Relating to contributions to retirement systems for firefighters in certain municipalities.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 3134 ON THIRD READING

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3134** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Patterson.

HB 3134 was read third time and was passed by a viva voce vote.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
Saturday, May 10, 1997

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 82, Declaring the chiltepin the official State Native Pepper of Texas.

HCR 209, Supporting the desire of the board of regents of The Texas A&M University System to combine the Baylor College of Dentistry, the Texas A&M University College of Medicine, the Texas A&M University Institute of Biosciences and Biotechnology, and the Texas A&M University School of Rural Public Health into a unified administrative structure to be named The Texas A&M University System Health Science Center.

HCR 215, Directing the Health and Human Services Commission to implement cost-saving measures in the Medicaid prescription drug program.

HCR 226, Commending Weslaco's designation as a Main Street City.

HCR 227, Honoring Calvin A. Rinn on the occasion of his retirement.

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

**HOUSE CONCURRENT RESOLUTION 109
ON SECOND READING**

On motion of Senator Truan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

HCR 109, Memorializing Congress to direct the Federal Emergency Management Agency to update federally designated flood zone maps every 10 years.

The resolution was read second time and was adopted by a viva voce vote.

**NOTICE GIVEN FOR
LOCAL AND UNCONTESTED CALENDAR**

Senator Harris announced that a Local and Uncontested Calendar had been furnished to each Member of the Senate. He then gave notice that the Local and Uncontested Calendar Session would be held at 8:00 a.m. Monday, May 12, 1997, and that all bills and resolutions would be considered on second and third reading in the order in which they were listed.

**SENATE RULE 11.19 SUSPENDED
(Posting Rule)**

On motion of Senator Harris and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Jurisprudence might consider the following bills today:

HB 984, HB 2007, SB 1840, HB 1091, HB 3559, SB 1329

**SENATE RULE 11.19 SUSPENDED
(Posting Rule)**

On motion of Senator Lucio and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Intergovernmental Relations might consider **HB 2049** Monday, May 12, 1997.

**SENATE RULE 11.19 SUSPENDED
(Posting Rule)**

On motion of Senator Armbrister and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on State Affairs might consider **HB 1200** today.

MOTION TO ADJOURN

On motion of Senator Truan and by unanimous consent, the Senate at 12:10 p.m. agreed to adjourn, upon conclusion of the Local and Uncontested Calendar Session, until 9:30 a.m. Monday, May 12, 1997.

CONGRATULATORY RESOLUTIONS

SR 705 - by Shapiro: Commending Alma Carter of Plano.

SR 706 - by Barrientos: Congratulating the Texas Lions Clubs.

RECESS

On motion of Senator Truan, the Senate at 12:10 p.m. recessed until 8:00 a.m. Monday, May 12, 1997, for the Local and Uncontested Calendar Session.

**In Memory
of
Gladys Youngblood Ross**

Senator Sibley offered the following resolution:

(Senate Resolution 698)

WHEREAS, On February 22, 1996, Gladys Youngblood Ross, a resident of Johnson County passed away at the age of 91, and the Texas Senate would like to pay tribute to her; and

WHEREAS, A native Texan, she was born in the Salem community in Johnson County; Mrs. Ross' parents, Walter and Alice Youngblood, and grandparents were prominent landowners in the community; and

WHEREAS, A woman with a strong sense of tradition, Mrs. Ross had been an owner and operator of cattle and agricultural farms in Johnson and Hill counties; at the time of her death, she had maintained an interest in land which had been in the Youngblood and Ross families for 119 years; and

WHEREAS, One of her most cherished memories from her childhood was when she joined Salem Baptist Church and was baptized in Chambers Creek on property owned by her grandfather; and

WHEREAS, Gladys Youngblood married Robert P. Ross on November 5, 1925; the couple created a warm and loving home for their children; her husband predeceased her in 1967; and

WHEREAS, A woman of independence and mettle, Mrs. Ross continued to manage her family's land until 1982, when she turned it over to others; and

WHEREAS, Mrs. Ross had been a member of the First Baptist Church of Grandview since 1924, and she read her Bible daily until her eyesight began to fail; and

WHEREAS, One of her community's greatest assets, Mrs. Ross provided knowledgeable leadership and contributed a great deal to the community of Grandview; and

WHEREAS, A talented woman of many accomplishments, Mrs. Ross was hardworking and ingenious; her dignity and charm beguiled all who knew her; and

WHEREAS, A respected and beloved member of her community, city, and state, she will be remembered for her leadership, generosity of spirit, love of family, and zest for life; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 75th Legislature, hereby honor the life of Gladys Youngblood Ross and extend sincere condolences to the members of her family: her

daughter, Bobbie Ross Washmon; her son, Joe Pitts Ross; and her four grandchildren and five great-grandchildren; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the loved ones of Gladys Youngblood Ross as an expression of the deepest sympathy of the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Gladys Youngblood Ross.

The resolution was again read.

The resolution was previously adopted on Friday, May 9, 1997. The names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

Senator Sibley was recognized and introduced to the Senate the family members of Gladys Youngblood Ross.

The Senate welcomed its guests and expressed its sympathy.